DOCUMENT RESUME

ED 196 994 UD 021 060

TITLE	Police Practices and the Preservation of Civil Rights: A Consultation Sponsored by the United States Commission on Civil Rights (Washington, D.C., December 12-13, 1978).
INSTITUTION	Commission on Civil Rights, Washington, D.C.
PUB DATE	79
NOTE	184p.
AVAILABLE FROM	Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.
EDRS PRICE	MF01/PC08 Plus Postage.
DESCRIPTORS	*Change Strategies; Government Role; Personnel Evaluation; *Police; *Police Action; *Police Community Relationship; Police Education; Recruitment; Research Needs
IDENTIFIERS	Commission on Civil Rights

ABSTRACT

This report presents the proceedings of a consultation held by the United States Commission on Civil Rights in response to a high volume of complaints about police misconduct. The central focus of the consultation was on institutional mechanisms affecting police conduct. Testimony was presented to the Commission on the following topics: (1) community perceptions of the problem, (2) the police role, (3) selection and training for the police role, (4) regulating police practices, (5) evaluating and monitoring police performance, (6) departmental sanctions governing police performance, (7) remedies, and (8) research and data needs. (MK)

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Police Practices and the Preservation of Civil Rights

ED196994

U S DEPARTMENT OF HEALTH,
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A CONSULTATION SPONSORED BY THE UNITED STATES COMMISSION ON CIVIL RIGHTS, WASHINGTON, D.C., DECEMBER 12-13, 1978

U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, handicap, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin;
- Submit reports, findings, and recommendations to the President and Congress.

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Arthur S. Flemming, *Chairman*
Stephen Horn, *Vice Chairman*
Frankie M. Freeman
Manuel Ruiz, Jr.
Murray Saltzman

Louis Nuñez, *Staff Director*

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UNITED STATES COMMISSION ON CIVIL RIGHTS

Consultation on Police Practices and the Preservation of Civil Rights

The Commission met, pursuant to notice, at 9 a.m., December 12, 1978, Chairman Arthur S. Flemming presiding. Present: Frankie M. Freeman, Commissioner; Murray Saltzman, Commissioner; Manuel Ruiz, Jr., Commissioner; Louis Nunez, Acting Staff Director; Richard Baca, General Counsel; Reita Pendry, Assistant General Counsel; and Gail Gerebenics, Assistant General Counsel.

Proceedings

CHAIRMAN FLEMMING. I will ask the meeting to come to order.

My name is Arthur S. Flemming, Chairman of the United States Commission on Civil Rights. I wish to welcome you to this consultation, which will be held in this auditorium for the next day and a half.

The other members of this Commission are Vice Chairman Stephen Horn, president of California State University at Long Beach, who is unable to be with us on this occasion; Frankie M. Freeman, an attorney specializing in estate and corporation law in St. Louis, Missouri; Manuel Ruiz, an attorney specializing in international law with offices in Los Angeles, California; and Murray Saltzman, rabbi of the Baltimore Hebrew Congregation in Baltimore, Maryland.

I would also like to introduce Louis Nunez, Acting Staff Director of the Commission, who will participate with the Commissioners in the consultation. Preparation for the consultation has been under the overall supervision of Richard Baca, General Counsel of the Commission, and coordinated by Assistant General Counsels Gail Gerebenics and Reita Pendry.

The Commission on Civil Rights is an independent, bipartisan agency of the United States Government established by the Congress in 1957. Its duties are the following:

First, to investigate sworn allegations that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, national origin, age, or handicap;

Second, to study and collect information regarding legal developments which constitute a denial of equal protection of the law under the Constitution in such fields as voting, education, housing, employment, the use of public facilities, transportation, or in the administration of justice;

Third, to appraise Federal laws and policies with respect to equal protection of the law;

Fourth, to serve as a national clearinghouse for information with respect to denials of the equal protection of the laws because of race, color, sex, religion, national origin, age, or handicap;

Finally, to investigate sworn allegations of vote fraud in Federal elections.

This consultation is a part of a national study on police practices being conducted by the Commission. The Commission has, over the years, received complaints of police misconduct from persons all over the country. Recently, the volume of complaints has increased, and requests for a Commission investigation into patterns of misconduct have come from groups as well as individuals in many cities. In making these requests, individuals have brought to the attention of the Commission allegations of police misconduct ranging from verbal abuse to the use of physical force to incidents involving the unwarranted use of deadly force.

In response to these complaints, many of which have come from minorities, the Commission has determined that a study of police practices is both timely and warranted. The central focus of our study will be the institutional mechanisms which impact upon police conduct. Through research, field interviews, and especially through the information provided us by the presentations we are about to hear, the Commission will attempt to identify the various departmental policies and procedures which have the optimum chance of offering interested cities and their police departments options for reform. Presentations made today and tomorrow will be recorded and transcribed.

In addition to the consultation, the Commission proposes, as a part of this national study, to look at selected police departments and study their mechanisms to ascertain which ones encourage or discourage misconduct. In conjunction with these inquiries, a comparative analysis will be undertaken utilizing the options developed out of this consultation and the research preceding and to follow it. While the conduct of police officers in individual cases may be investigated, it will not be for the purpose of establishing either the guilt of the officer or of those who failed to properly supervise or discipline the officer. Rather, it will be to determine how the system under which the officer operated could be modified to minimize the potential for abuse, while still protecting adequately the due process rights to which officers are entitled.

Following these onsite investigations, the Commission will hold public hearings, the purpose of which will be to contrast effective methods of controlling or ameliorating police misconduct with existing policies and practices.

The information accumulated in the course of this consultation and through research, field studies, and hearings will be the basis of a report which will contain the Commission's findings and recommendations to the President and the Congress. The report may include, among other things, recommendations for changes in legislation and policies providing institutional mechanisms and alternatives through which the problem of police misconduct can be more effectively controlled. The report can serve to help the Congress to identify the need for model legislation.

At this point, I would like to ask the first panel to join us on the platform.

Ms. PENDRY. Is Jean O'Leary here? Eduardo Pena?

COMMUNITY PERCEPTIONS OF THE PROBLEM

CHAIRMAN FLEMMING. At this time, I am very happy to introduce our first panelist, Mr. Michael Meyers, assistant director of the NAACP and director of their office of research policy. He is on the board of directors of the National Alliance for a Safer City, the New York Civil Liberties Union, and the National Coalition Against the Death Penalty. He has done research and writing on the topic of police practices and assisted in the preparation of the book *Search and Destroy* by Roy Wilkins and by Ramsey Clark.

We are very happy to have you here with us.

STATEMENT OF MICHAEL MEYERS, ASSISTANT DIRECTOR, NAACP

MR. MEYERS. Mr. Chairman, ladies and gentlemen of the Commission, first, let me congratulate the Commission for its continuing investigations into the problems of civil rights protection and for its courage and its independence. Your task is so important and so very necessary.

The last time I spoke on the subject of police practices and civil rights abuse, my remarks were challenged by one of America's preeminent and former police commissioners, who said my analysis was dated. The commissioner politely accused me of a 1960s approach and view about police conduct vis-a-vis the black community.

I responded then that he was absolutely right. I again start with the premise that anything which we may say today will sound "dated" and will not sound new, although the data may be more convincing and compelling than ever to justify some old allegations.

Most of the general public, urged on by media propaganda and "reverse discrimination" crusades, is irritated by the constant agitation of black Americans. Many whites are still beset so much by their own problems and wonder what fresh complaints of discrimination and harassment are being brought by blacks and nonwhites now. The answer is, of course, that the allegations of discrimination are not fresh. They have been there all the time, rooted deep in the white

American consciousness, so deep that it does not appear anymore as racial discrimination or newsworthy, but as mundane as usual practice.

Allegations of police misconduct are difficult to prove or to have adjudicated in a court of law when the victim is poor, low status, or is intimidated/defeated by official bureaucratic complaint procedures, or when the grand jury refuses to return an indictment against a police officer, or when a petit jury identifies with the police officer's actions. Very frequently, the average citizen will sympathize with the police officer's job because it is well known that he will "have to" use unusual force to deal with the rabble in the streets. This mentality is reinforced by our more popular TV shows, where the population is encouraged to approve lawless conduct by the police who have laudable ends in mind, and who, it is subtly suggested, are hampered by legal procedures and technicalities imposed by liberal court decisions.

The enormous propaganda includes TV docudramas which picture blacks and Hispanics as mean-faced, street-wise, drug peddlers. The blacks who are not depicted as clowns are vicious criminals who "won't work" and who prey on innocent people in the streets. The flight to the suburbs and the abandonment and neglect of our cities as urban jungles, the division between "black" and "white" communities, is, thus, stereotyped. The message is a clear one—that the people in the ghettos are expendable, because their lifestyles are not one of civility.

There's really nothing in 1978 that I can use to refute Malcom X's analysis of 1965. He said then that:

> Whatever the government is going to do, it always wants the public on its side—whether it is the local government, state government or federal government. At the local level, they will create an image by feeding statistics to the public through the press showing the high crime rate in the Negro community. As soon as this high crime rate is emphasized through the press, then people begin to look upon the Negro community as a community of criminals. And then any Negro [and I would add, any child in the Negro community] can be stopped in the street....And once the public accepts this image, it also paves the way for police-state type of activity in the Negro community—they can use any kind of brutal methods to suppress blacks because they're criminals anyway.

The seriousness of this situation must be faced up to. Psychologist Kenneth Clark points out that:

> There remains the possibility that homicide in the ghetto is consistently high because it is not controlled, if not encouraged, as an aspect of the total network of the human exploitation of the ghetto. The unstated and sometimes stated acceptance of crime and violence as normal for a ghetto community is associated with a lowering of police vigilance and efficiency when the victims are

also lower status people. This is another example of the denial of a governmental service—the right of adequate protection—which is endured by the powerless ghetto.

I hope that you do not feel that I am exaggerating or overstating the situation of police abuse and tactics and relations with dark people. If anything, I am understating the nature of the tension, anger, distrust, mutual suspicion, and general dissatisfaction with police conduct in the black community.

The police action which robbed black community leader Arthur Miller of his life in Brooklyn, New York, and the subsequent refusal of the grand jury to return any indictments is an example of the ruthless disregard for the lives and sensibilities of black people. The Arthur Miller killing may very well be likened to the incredible findings of the investigation of the slaying of black South African activist Stephen Biko in the hands of the state's police, unless a truthful statement and some prosecution comes forth, under the auspices of the Federal Government.

Some of you may have read or heard about the killing of 15-year-old Randolph Evans, a small boy in Brooklyn, on Thanksgiving evening in 1976. The police officer fired his revolver pointblank, and for no apparent cause or justifiable reason, another child's life was gone. The police officer was, in fact, indicted for the homicide, but subsequently acquitted by a jury on the grounds that he was temporarily insane, having suffered from a "rare," and I emphasize the word "rare," form of "psychomotor epilepsy." Whether the policeman did indeed suffer from an attack of "epilepsy" at the time he pulled his revolver, fired, and killed that child has continued to be a matter of controversy and dispute. But today, after 1 year in medical confinement, the same police officer's attorneys, upon the recommendation of psychiatrists, are saying he should be released because he is apparently cured.

Police brutality tops the list of critical concerns of blacks residing in Philadelphia. There, as many have commented, the city's chief executive officer has blatantly advocated racist philosophies. A recent article in *Encore* magazine synopsized the difficulties in that city of brotherhood with police brutality. It reported to non-Philadelphians the police shooting of a handcuffed Black Muslim street vendor in July; that last year Philadelphia police killed 10 people and wounded 18 others, most of them black; that this year more than 500 complaints of police abuse have been reported to the Public Interest Law Center there. Since 1975 Philadelphia has paid more than $2 million in court settlements for brutality cases. Who did not see on television—and who could deny—the horrible police beating of the black man Delbert Africa following the police raid on the headquarters of MOVE, the black back-to-nature cult?

With respect to police brutality, nothing is new. There isn't anything different about the allegations of the dual system of law enforcement,

in terms of disparities of treatment in the adequate and appropriate delivery of police protection to distressed communities where the problems of drugs and crime are severe. Police seem more preoccupied and interested with the victimless crimes, such as prostitution, than with drug dealing. One can immediately go to the busy downtown district of New York City, for example, and hear the solicitations of sales for drugs, "smoke, THC, acid, black beauties." The solicitation to sell a "black beauty" to the passerby in Manhattan is not any promotion of prostitution, but a drug sale, which police hear and observe and do nothing about. They're busy around the corner harassing women who they believe to be prostitutes.

Nothing is new about the poor responses to calls for help that come from the black ghettos. People either fear to call the police or call them and get inadequate response. This is routine and sometimes comes to light when a white woman is killed on the streets at the fringe of the ghetto, and there is an official outcry because police didn't pursue a tip from a concerned citizen. The feeling is still widespread that blacks are more criminally inclined than are other races. This idea has been subtly and overtly fostered by "law and order" people and "get tough" legislation promising to throw away the key on "violent juveniles" rather than reform the conditions of poverty and joblessness in the ghettos. What is forgotten is that blacks are the victims of robbery, rape, and murder. We need protection, not legal persecution at the hands of police officers in our neighborhoods.

Permeating racial and ethnic discriminatory patterns in police killings were found and documented by the MARC Corporation (Metropolitan Applied Research Center) in a report released in 1974, examining the race of alleged perpetrators correlated with the race of the patrolmen involved.

But we can better recall the Kerner Commission's inquiry into the 1967 riots. What is different today from the Kerner Commission's 1968 observation that "the atmosphere of hostility and cynicism [within the black community] is reinforced by a widespread belief among Negroes in the existence of police brutality, and in a 'double standard' of justice and protection, one for Negroes and one for whites"?

If anything has changed, it is the pervasiveness of the problem. The Klan has ridden North, and their protector, the southern redneck sheriff, has a new town and a new uniform.

If anything has changed, it is that Federal civil rights statutes designed to bring to justice those guilty men in Southern States who robbed black people of their life and liberty without due process of law have now become the instrument by which the Federal Government must intervene in northern and western towns to bring prosecutions when local juries and authorities do not.

If anything has changed, it seems to be the Supreme Court, upon which civil libertarians and civil rights forces and petitioners can no longer depend to check in a meaningful fashion police misconduct.

If anything has changed, it is the increasing militancy on the part of patrolmen benevolent associations, which now dare to sue the NAACP in San Francisco, California, for example, for slander because of an allegation by the NAACP of pervasive, "systematic, sadistic and criminal assaults on black citizens in that city."

I think I have said enough to present an overview of the black community's view of police practices and our compelling interest in the preservation of civil rights. Surely, we appreciate the Commission's invitation to present here our candid, unfresh views.

Thank you very much.

CHAIRMAN FLEMMING. Thank you very much, Mr. Meyers.

I am very happy to recognize our second panelist. We will hear from Ms. Jean O'Leary. Ms. O'Leary is co-executive director of the National Gay Task Force. She was appointed by President Carter to the International Women's Year Commission. In 1976 she was elected a delegate to the Democratic National Convention. She has lectured at universities around the country and is herself a doctoral candidate at Yeshiva University. She is the author of several articles, among them, "Legal Problems and Remedies," published in *Our Right to Love: A Lesbian Resource Book*. Ms. O'Leary, we are happy to have you here with us.

STATEMENT OF JEAN O'LEARY, CO-EXECUTIVE DIRECTOR, NATIONAL GAY TASK FORCE

Ms. O'LEARY. Thank you. I am very happy to be here with you. Most of my comments this morning will apply to the gay male community rather than the lesbian community, except where I mention it specifically, because gay men have most of the problems with police brutality.

A few years ago in New York City, a young Vietnam veteran was walking home one night when he was appproached by four other young men, about his own age, whom he recognized from the neighborhood. They seemed to know he was gay, and one of them took him aside and suggested they go together to a nearby park for sex.

Shortly after they arrived, the three other youths showed up and demanded they be included. When our young veteran refused, he was robbed of his money and virtually all of his clothing, and he was beaten so severely that he had to be taken to the hospital with severe bruises, contusions, and a broken back.

He was able to identify his assailants, and they were apprehended and interviewed. They said that their victim was a "fag" and they swore—three of them falsely—that he and they had committed sodomous acts. So the police advised the youths to file a countercharge, and the young gay veteran was arrested on four counts of unilateral sodomy.

All five youths were assigned to the same legal aid attorney, who discussed the matter with the district attorney and came back to his clients with a deal. If the young veteran would drop his charges of assault and robbery against his assailants, and they would drop their charges of sodomy against him, the whole matter could be resolved. Aware that, if convicted, he might face a longer jail term for his "crime" than the four others could get for theirs, he accepted the deal. Since then, his physical injuries have made it impossible for him to take a job requiring physical labor and, despite his three medals for military service, his police record has made it difficult for him to get other kinds of employment.

A few months back, in a small town in Delaware, another young man was also headed home, pleased with the fact that he'd completed his first term as a schoolteacher with commendations from his superiors. He noticed that a car was driving slowly beside him as he walked, and when he looked to see who it was, the car's occupant beckoned him and, when he came closer, propositioned him. No, he said, he'd had a hard day and was going home. But the car followed as he headed toward his house, and it pulled up in his driveway. The driver said he was lonely and asked to be invited in, but the young schoolteacher said he didn't like to take up with strangers. He suggested just staying where they were and talking for a while. After a half-hour or so of friendly conversation, the man in the car once again asked for an invitation, and this time the schoolteacher agreed. Just as he pulled the key from his lock, he was arrested for "solicitation."

Fearful for his job and the possibility of public exposure, he agreed to sentencing prior to trial and got off with the promised probation, which he'd been told wouldn't show up on his permanent record. He didn't know that the police had called his principal to tell him there was a "fag" on his staff. The principal already knew the young teacher was gay, but felt that "under the circumstances" he'd now have to share this information with the school board. A few weeks later, a board representative demanded his resignation. Since he knew he could be fired for any reason at all prior to receiving tenure, and he was told he'd "never be able to get another job" if his homosexuality were revealed, he agreed to resign. Ineligible for unemployment benefits, he's been working on odd jobs and trying to figure out a way to get back into his profession.

A few weeks back, right here in Washington, D.C., women on their way home from a local lesbian bar were subjected to what seemed to be a concerted series of attacks. Within a relatively brief period, six rapes and eight brutal assaults were reported to the police, but these crimes were not investigated or followed up by an increase in preventive police action. The women were told that an increase in police protection for a particular part of town can only occur when it shows up as a high-crime area on the central computer and that only one of these crimes had entered the computer, since the officers in all the

other cases had "used their discretion" and failed to enter a formal report. They hadn't thought that crimes against lesbians were worth investigation. The women who were victims of these crimes, some of whom have suffered permanent disability, are now being asked to rereport the attacks against them, since this is the only way an investigation can begin. There is still no step-up in police protection.

We at the National Gay Task Force know about these incidents because these victims of police abuses bothered to tell us about them. But we do not know the scope of the problem. And we don't think we will know until a broad-scale investigation of police attitudes, policies, and practices toward gay men and women is undertaken by the Commission.

All we can do now is to give you some idea of the sort of things we know exist. We know there are crimes committed by police against gay citizens—crimes of extortion, blackmail, rape, and assault. We know that gay suspects and gay people accused of nothing at all are treated to verbal abuse and physical attack. We know that gay people are murdered in police custody and that these incidents are not investigated. We know that gay prisoners are forced to strip and "bend over" while other prisoners are merely "frisked" in the course of a routine search for weapons. We know that off-duty police officers continue to throw tacks in the parking lot of a gay bar in Santa Monica, and that on-duty police in a small town in Alabama make daily excursions to the home of the town's one "known homosexual" and throw garbage on his lawn.

Police officers stand by and watch while gangs of queer-baiters beat and rob gay men. Guards in police lockups stand by while gay people are repeatedly raped and beaten up by fellow prisoners. Crimes against our persons and our property are ignored and unreported. In New York City, even a chain of suspicious murders received low priority when we were the victims. In Chicago, a gay man was recently arrested when he tried to complain to headquarters that an investigating officer had refused to file a report of assault and robbery against him.

We know that we and our meetingplaces are subjected to unique forms of harassment. In many communities, police raids of gay bars still regularly occur. Patrons are frisked, mugged, fingerprinted—and released without charges. Police in Illinois monitor the ads in gay papers and identify the owners of the box numbers; in Colorado they ask everybody near a gay cruising area to produce identification; and in Connecticut they take down license-plate numbers; and in all three cases, this information is used to call employers and ask them whether they know they have "suspected homosexuals" working for them. A gay man in Long Island who has never been convicted of any crime, and never even been accused of one involving violence or children, is nonetheless called regularly to the police station whenever a child is murdered or molested.

We know that bizarre forms of entrapment are used against gay men. Police officers solicit and engage in sexual acts with those they subsequently arrest for sodomy or solitication. They frequently expose and excite their own sexual organs as a way of inviting approaches. Vice squad officers in Milwaukee have rented hotel rooms in the garb of off-duty sailors and have lain naked on their beds with their doors open, beckoning passers-by to enter.

We know that the laws are unequally applied and unequally enforced against us. We know that, in the District of Columbia and the 30 States which still have consensual sodomy statutes, these laws are almost always enforced exclusively against homosexuals, unless the heterosexual situations involve prostitution. In "lover's lane" situations, heterosexual couples are told to just move on, while gay people are arrested for public indecency or sodomy. Two women have been charged with sodomy for sharing a sleeping bag in Michigan and two men for kissing in a parked car in California. Two women have been arrested for dancing together in Massachusetts and two men for holding hands in New York.

Female prostitutes are usually arrested and their "johns" let off scott-free, while male prostitutes are often let go and the "johns" arrested. Vague loitering, disorderly conduct, and solicitation statutes are employed in most communities entirely against gay people. Gay men are arrested for "touching in a rude and insolent manner" in Indiana; for "indecent, wanton, and lascivious acts" in Colorado; for "being a lewd person in speech and behavior" in Massachusetts; and for "assault and battery" for simply touching a police officer in a variety of States. Police in Denver regularly arrest gay people on State property, citing city statutes they know don't apply. "Protective custody" is regularly used in Boston as a way of rounding up gay men and keeping them in jail overnight. Jaywalking and illegal-parking tickets are handed out regularly in front of gay bars, while similar infractions are ignored at other bars on the same block. In some cities, minor building code, occupancy, and fire regulations are enforced selectively against gay establishments; and in other cities, particularly those where criminal elements have a monopoly on ownership of gay bars and baths, fire and safety regulations are not enforced at all, on the theory, espoused by one police officer, that "it doesn't matter if they burn."

Ten years ago all these police abuses were seen by the majority of gay people as an inevitable part of what it meant to be a homosexual in America. We were afraid to complain because public exposure would mean the certain loss of our homes and our jobs. Today, these perils still exist, but many of us have said, "Enough!" We are no longer willing victims of those who abuse us under the color of law. We have complained, and we have organized, and in a number of instances we have met with success. In many cities, the periodic raids on gay bars and arrests for same-sex dancing have stopped. In many cities, the more brutal or obvious forms of harassment have ceased.

There are fewer arrests for loitering, disorderly conduct, jaywalking, or illegal parking. In some cities, crimes against gay people are now pursued with equal vigor. Gay police-community relations programs are under way.

But, as in other areas of our society, our progress and the growth of the gay rights movement have created a "backlash," sometimes resulting in an increase of police abuses and in new forms of abuse. Peaceful gay demonstrators have been brutally beaten by the officers of the law assigned to protect them. Gay leaders like Bruce Voeller, my co-executive director at the National Gay Task Force, have been arrested for peaceful picketing. Our legal, nonviolent, political organizations are kept under constant surveillance and infiltrated with agents. Crimes by gay people are trumpeted to the press, while crimes against gays are kept under wraps. The former Los Angeles police chief consistently distorted his city's child-molestation statistics, which proved that over 90 percent of such crimes were committed by heterosexuals, by telling the people that most crimes were committed by gays. A police chief in New Mexico told the press that a mass-murder suspect must be gay because, "They usually try to murder their lovers."

One way that such attitudes, policies, and abusive practices against other minorities have been lessened is by ensuring that members of these minorities are well represented on the police force. But, at present, that solution isn't working for us. Gay men and women are represented in police ranks. But most of them don't dare reveal themselves or attempt to change things—not when most police departments in this country refuse to hire known homosexuals and fire those that are found out; not when five policewomen in Boise, Idaho, can be fired on suspicion of being lesbians; not when the Police Benevolent Association in Boston publishes a newsletter with a steady stream of antigay cartoons and jokes, or the one in New York opposes gay rights legislation on the familiar grounds that, "We can't work as a team with people we don't like."

There are some nongay police officers, however, who have become sensitized to human rights. If the research of this Commission is to uncover the scope of the problem of police abuses against gay citizens, it is they who are likely to be of most help. After we sent out a call for information we could supply to this investigation, we received a letter from one such police officer in Portland, Oregon. He wrote us anonymously, but on official stationery, indicating that, in his city, there are all, and more, of the police abuses I've just outlined. He admitted that he himself participated in many of them. I'd like to read you a bit of his letter.

> The Gay Rights issue has come as a threat to concerned conservative citizens....The police continually received complaints from churches and their laymen, local politicians concerned about their

jobs being taken over by pro-gay rights advocates, and other community citizens who fear that the gays are going to take over the world. The Portland Police Bureau...has been under a lot of pressure to clean the city of this "sin" and it...has encouraged a majority of Portland officers to retaliate against homosexual citizens. It is a fact that many of our police officers are beginning to enjoy the opportunity to intimidate and knock the gays around....

Gay juveniles who wish to remain closeted from their parents and friends who do not know they are gay virtually have no defense against police, who will often contact the parents....You may have wondered by now why I have taken the stand for gay rights. One of the juveniles that I arrested committed suicide as a result of his parents' finding out his homosexuality. The father was a county sheriff's deputy....Because I am the officer that told the parents of their son's sexuality, I feel responsible for the suffering of a great many human beings. After I have had time to reflect on myself and past actions, I am determined to fight for the rights of all human beings....These types of police practices need to be abolished and abolished now.

Thank you.

CHAIRMAN FLEMMING. Our next panelist is Mr. Eduardo Pena, the executive director of the League of United Latin American Citizens. He is also the Acting Director of the Office of Government Employment of the Equal Employment Opportunity Commission. He was formerly a legislative assistant to Senator Birch Bayh and also counsel to the Senate Committee on Labor and Public Welfare. Mr. Pena is the national vice president of the Hispanic Bar Association. We are very happy to have you with us.

STATEMENT OF EDUARDO PENA, JR., EXECUTIVE DIRECTOR, LEAGUE OF UNITED LATIN AMERICAN CITIZENS

MR. PENA. Thank you very much, Mr. Chairman. First of all, I would like to apologize for being late. I had transportation problems this morning, but I'm glad I'm here.

Thank you very much for inviting me to participate on this panel. I think it's a timely topic because it is a matter of great importance to the Mexican American community throughout the country. As you know, I am sure, the Hispanic community has been quite concerned with the administration of justice by police throughout the country, and this is an issue that affects the Hispanic not only in the Southwest where the issue has been most vociferous, but also throughout the country in areas like New Jersey and New York, and even down in Florida. Sometimes we have problems with police that create areas of discrimination and police brutality which should not be countenanced in this area.

First of all, this issue began and became most visible when a series of very brutal murders took place by the police in south Texas. Initially, there was a young 12-year-old boy who was shot by the police in the police car in Dallas, Texas, and for a long time the Hispanic community required or asked for Federal intervention in this case, because the local police department did not respond to prosecute the guilty individuals.

Subsequently, there was another case in which a sheriff shot a prisoner and killed him, and his wife and his mother-in-law took the prisoner about 600 miles across the State and buried him on a ranch that they owned in order to hide the evidence. But, nevertheless, the body was found, and the sheriff was tried, and he received a 1-year suspended sentence, and the other people who were accessories to the crime, who transported the body, were not even tried in State court.

That happened shortly before the new administration took office; and a few months after Attorney General Griffin Bell took office, he announced a new policy on the part of the Department of Justice in which they said that they would review State actions in areas where there was joint jurisdiction between State and Federal, and they would decide whether or not the State action warranted Federal intervention in those cases.

As a result of that new policy, the second case, in which the sheriff shot the prisoner, that case was retried in Federal court, and the sheriff received 10 years to life, and the two accessories were also tried and also received adequate sentences.

However, then we received the issue of the Rodriguez case, a young 12-year-old boy who was shot. And at the same time, my organization and a number of other Hispanic organizations began to accumulate data on police brutality cases throughout the country, and within the short span of a month to a month and a half, we accumulated 56 cases of police brutality and documented them, and they were submitted to the Justice Department through a letter sent by Vilma Martinez, who is the general counsel for the Mexican American Legal Defense Fund. All of our organizations participated in the accumulation of documents and evidence and submitted it to the Justice Department.

Then we had a meeting with the Attorney General and asked that they prosecute some of these cases. There has not been any prosecution beyond that one case in which that young prisoner was shot, except for an appeal on a sentence made in the Houston case dealing with the Joe Campos Torres case.

The problem with police brutality and the problem of dual prosecution is one for which initially the State, the local justice system, has prime responsibility; and of course, we do look to the local justice system for correction of violations by police. However, we know that because the people who prosecute and people who try these cases are elected by the local electorate, the result is these prosecutions are either nonexistent or they are very light, simply because the prosecu-

tors and the judges who try the cases are dependent upon the good will of the community, and the police enjoy a very good relationship with the general electorate, and consequently, we wind up with a situation in which the prosecutions are not vigorous.

So, it's up to the Federal judicial system to step in, and they have the authority and the law behind them, and they can step in and participate. That is absolutely essential, that we begin a process in which the Federal Department of Justice takes a much more vigorous approach in prosecution.

The reason is that we need a deterrent to these crimes. The problem right now is that the police have a sort of "cowboy" mentality. They wind up thinking that anything they do is right. Consequently, they don't really think about the consequences of what might happen to them if, in fact, their actions turn out to be in violation of the law. What is really necessary is some deterrent to that kind of thinking, and the only deterrent that can take place will be for vigorous prosecution by the Department of Justice.

We have met several times with Attorney General Bell and the Deputy Attorney General, Benjamin Civiletti, to discuss ways in which a deterrent can be generated. We have been assured by the Justice Department that prosecutions on police brutality have high priority in the Justice Department. The result is, however, there have been no prosecutions hardly, and we are still waiting to see that they take the action they promised to take.

In the meantime, they have told us that they have also begun a review of the practices to see what is involved in the practices that limits their ability to prosecute these kinds of cases, and we still have not seen the fruits of that investigation.

We have submitted a series of actions which we think will provide some deterrent to police brutality cases against the Mexican American community. In the first place, we would like to have the Attorney General or the President write to every police department in the country to tell them about the policy that police brutality cases have a high priority in the Department of Justice, if in fact—that is what they tell us.

We tell them, though, "Don't tell us about it; tell the police. Write to every police department and tell them that if they violate the civil rights of minority groups throughout the country, that those cases have a high priority in the administration of justice by the Justice Department."

Secondly, there ought to be some more prosecutions. They have been studing this list of about 56 cases, copies of which I've been submitted to the staff previously, of the police brutality cases against Hispanic Americans, and there have not been any prosecutions in these cases. We would like to see some vigorous prosecutions in a number of cases throughout the country in different areas of the country, so that the police will actually see there is some strength behind the letter.

Thirdly, and most importantly, I think, is the need to initiate an FBI investigation immediately after a police brutality case is reported. Presently, the system requires that if there is any State action in the case, the Justice Department withholds any action until the determination of the State action. The result is there is a minimum investigation by the State, a great deal of time is used up, and lots of time to cover up and to get their story straight, and by the time the Justice Department, the FBI, finally comes in to make their own investigation, the trail is cold and it's very difficult to get the accurate data that's necessary for a vigorous prosecution.

What we are advocating is that the FBI be called in immediately after a case is called regardless of what the State is doing, and even if the Federal Government does not ultimately prosecute, it will do two things: one, it will give the FBI an opportunity to get fresh data and to document the cases while the evidence is still available; and, secondly, it will provide an incentive for the local law enforcement officers to do their job right because, if they don't, they know that the FBI has the evidence and they can follow up with Federal prosecution; and thirdly, I think it is necessary that we establish in those communities that have shown, where the police propensity for brutality exists, to establish a police and citizens' review board.

It is necessary to establish some sort of relationship between the community and the police in order that the community would once again begin to establish faith and trust in the police departments in those cities. It is absolutely essential because we need the police, too. Many of the crimes committed are against minority groups, against their own people, so it is important for us to have good, effective police working in our community; but it is not effective if our community doesn't trust the police, if these acts of police brutality continue, and it's important that they be terminated in one way or another.

That, essentially, is the position my organization has taken on these cases, and I hope that this will not be the only effort that you will have. I understand you are going to have some hearings in different parts of the country, and I'm looking forward to having our people participate in those hearings as well.

Thank you very much.

CHAIRMAN FLEMMING. Thank you very much.

Our next panelist is Mr. Lee Reynolds, director of the Law Enforcement Minority Persons Project, National Urban League. The project's aim is recruitment and retention of minority men and women as police officers. Mr. Reynolds assists police departments around the country in their minority recruitment efforts. Mr. Reynolds holds an M.A. in urban studies from Queens College in New York. He retired from the New York Police Department in 1973 after 20 years of police service. Mr. Reynolds, we are very happy to have you with us.

STATEMENT OF LEE REYNOLDS, DIRECTOR, LAW ENFORCEMENT MINORITY PERSONS PROJECT, NATIONAL URBAN LEAGUE

MR. REYNOLDS. Thank you, Mr. Flemming. I have to correct one thing. I retired in 1977. You make me older than I am.

Just to give you a brief history of my perspective as far as the police and the community goes, after over 20 years in the police department, you probably think that I have sort of a parochial view, but I have had some experience other than just as a police officer. I worked as an investigator for a year with the Civilian Complaint Review Board of New York. I was also an investigator with the Firearms Discharge Review Board, and I spent some time in internal affairs, and they gave me the honor of helping set up a task force to surface violence-prone police officers, so it gave me a deeper look into the problems the community faced with the police, rather than what the police faced with the community.

My recent activity for close to 2 years with the National Urban League has been giving technical assistance to police departments and also assisting with compliance reviews, and this has also broadened further my appreciation of the communities' problems with police.

Over the last 2 years I have assisted, as an investigator, with compliance reviews in Hartford, Connecticut; Kansas City, Missouri; Dade County, Florida; the State penitentiary system in South Dakota; and most recently, in Asheville, North Carolina. The technical assistance was in San Francisco; East Cleveland; Harrisburg; Connecticut; Hollywood, Florida; Lafayette, Louisiana; Jefferson Parrish, Louisiana; and Jersey City, New Jersey; and many others.

Basically, what I found is, it's a matter of attitude and commitment. In the late 1960s it was a great commitment, a great deal of resources spent by police departments, criminal justice agencies, in addressing this schism, this canyon that was between criminal justice and the community. It seems that the fiscal crunches and crises, the depressions and recessions of the seventies have made this commitment a luxury that most departments no longer seem to afford. I say a "luxury" because that's how most departments seem to view it.

A case in point, in New York City there is an area in Manhattan that starts from 86th Street and goes up to the Bronx County line—those of you who are familar with it—and goes to the Hudson River to the East River, which takes in all of Harlem, Central Harlem, and East Harlem. The youth division is down to three persons, which says one of two things. Either all the youth crime problems or youth delinquency problems or youth problems, period, have been completely eliminated, or they are no longer a priority. Our crime statistics for the area tend to support the theory that they are no longer a priority, and yet, there is still talk of eliminating those three persons.

This commitment has to be refocused, number one, back to affirmative action in employment. We have found time and time again in the cities that I have named, and many others, that the position seems to

be taken that it has had its day, and we see no results; that enough money has been spent, yet we see no results; that that is no longer a priority.

The youth programs, in most major cities where they did exist, have been made a shambles. They exist in name only.

The community relations programs that were once funded well, staffed well, have become offices, and most recently, in the last month, I was in a city where they had an office of community relations where they kept no logs of activity, they kept no proposed activity plans and admitted they had no budget for the last year; yet, there was a community relations office there.

There is a fortress mentality that seems to pervade many of the police departments. In Dade County, Florida, when you go into a police station, you find that you are insulated from speaking to the officer by bulletproof glass. You must identify yourself, present some identification, and you are given a pass to enter this public building.

The Pennsylvania State Police Building has the same sort of fortress-like entrance. And I say this is a good example of that barrier that seems to exist between police departments and the public that, somehow, you shall not gain access. This is where community relations has to step in and take down these walls and glasses and break down this fortress so it becomes a public office, like a tax office, like the motor vehicle bureau, like any other office, to serve the people.

It has been more than a retreat; I think there has been evidence of a posture of resistance or standing in the door. This becomes evident when you look at affirmative action. City after city, the greatest opponent of any affirmative action, any revisions of entrance qualifications, of the selection process, seems to be the line organization of that particular police department. By "line organization," I mean the union. They feel that any change, no matter how greatly it's needed, is somehow eroding their base. They are being deprofessionalized—that's the term they like to use—as lowering of standards, and some of those standards are archaic.

What is really needed to remedy the situation is a pro-active community relations program, to pro-act, not react; not having a group of police officers go in after there has been a confrontation, but an ongoing, viable, community relations program that is bridging this gap, this canyon that exists between police departments and criminal justice and the public.

A firearms-discharge policy that clearly tells the police officer when he or she may resort to the use of deadly force, this firearms-discharge policy should also have a review mechanism set in so that each discharge is reviewed. This is not disarming the police, but giving responsibility with authority, because when you give a person the authority and the means to take a life, there must be some responsibility and also review attached to it.

There must be reviewed, innovative affirmative action programs so that the police departments and criminal justice systems will reflect the population that they serve. Mr. Meyers cited one or two incidents in Brooklyn where Mr. Arthur Miller was killed and a youth, Randolph Evans, was shot; and I have to compare that to a recent incident in New York City where approximately 2,000 people invaded, took possession of a police station, where property damage was quite high, and there were only three police officers present and at high tide when reinforcements were called, approximately 100 to 200 police officers responded, and no one was arrested. No one was killed. The minority communities look upon this disparity in treatment as an example of how police departments, criminal justice agencies, respond one way to one segment of the population and the other—quite the opposite—to another group.

I am saying that the restraint that was shown in this particular incident is the same type of restraint that should pervade the action of the police officers towards any citizen. It should pervade his action towards victims because this is another area that police departments historically have been very callous in treating minority persons. The victim of any crime in any minority area where we have lots of crime is somehow made to feel that he or she is—to use the the police phrase—"the perpetrator." They are made to feel that if they dare bring this complaint to them, the police department will not handle it properly because, "Why are you living in this area?" And these are stories told by the store owners that when they complain about a burglary or robbery, a police employee will say, "Now what are you doing here?"

A recent article in the *Amsterdam News* 2 weeks ago related that one of the larger department stores wanted to locate in Harlem and was dissuaded by the police department. A franchise food chain wanted to locate in a historic restaurant spot in the heart of Harlem. Once again, it was the police department who dissuaded this particular business from coming in. So it shows basically the opinion the department had of that area or neighborhood was influencing the economic vitality of that neighborhood, and a complete breakdown of community relations, where there is an exchange, where there is a building up of this stream, where there is some sympathy, compassion, and concern, is totally missing.

Thank you.

CHAIRMAN FLEMMING. Thank you very much.

Our final panelist is Mark Schact, a legislative assistant for the Mexican American Legal Defense and Education Fund. He has been actively engaged in the work of that organization in addressing problems of police conduct in the Southwest particularly, as well as in other areas of the country. His duties have included communications with the executive branch with regard to police abuse against Hispanics and potential redress for abuse.

We are very happy to have you with us.

STATEMENT OF MARK S. SCHACT, LEGISLATIVE ANALYST, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND

MR. SCHACT. Thank you, Mr. Chairman. I am happy to be here, and I would like to extend my thanks to you and the regrets of Vilma Martinez, the present general counsel of MALDEF, and Al Perez, the associate counsel here in Washington, whose schedules did not permit them to attend today. Nevertheless, we would like to commend the Commission for all it has done in this area, and we look forward to the future to participating in any way that you feel is appropriate.

As some of the panelists have indicated, incidents of police brutality against minority people have increased dramatically throughout the country in the last year. This is true for Chicanos in the Southwest as well. It was as a result of our concern that this grave national problem is not being addressed in a way that does justice to it that MALDEF and other Chicano groups began to document cases of official misconduct. And as Eduardo Pena has noted, between February and April of this year, 56 cases of police brutality were submitted to the Department, and I regret to have to tell you that I align myself with his comments and tell you that we are extremely disappointed in the way the Department has responded. Nevertheless, we continue to believe there is an appropriate Federal role to be played in preventing the collapse of the administration of justice in the Southwest.

The 56 cases we submitted document the existence of a justice system that all too often violates the rights of those it purports to protect. For example, I would like to share with you some of the cases that were documented and just read a few of them.

In Oakland, California, a police officer stopped a Chicano motorist in connection with a stolen-car investigation. He spreadeagled the Chicano against the car and conducted a body search with a loaded and cocked shotgun pressed against the man's head. The search ended when the officer shot and killed the Chicano beside his car.

In Denver, Colorado, an Anglo private citizen exchanged "heated words" with a Chicano on the street. The Anglo returned to his home for a gun and then went back and shot the Chicano down, killing him. Mysteriously, after the gun was taken into police custody, it was melted down. Because it was the main evidence in the case against the assailant, the charges were dropped.

In Los Angeles, a Chicano, fearing gang violence, telephoned the police for assistance. When they did not arrive in a reasonable period of time, the man went out and bought a knife for his protection. Upon their arrival, nearly an hour later, the police displayed such aggressive behavior that the Chicano ran from them, eventually falling to the ground in exhaustion. Witnesses state that at no time did he threaten the police with the knife. Yet, the first officer fired and wounded the Chicano, while the other fired five shots into his body, stopped, reloaded, and then fired another six shots into him. Witnesses to the killing claim that following the incident, they were physically abused

by the officers. A subsequent police investigation exonerated the officers, alleging that the Chicano threatened both a young boy and one of the officers with the knife when they arrived.

In Austin, Texas, a Chicano involved in a traffic accident was beaten by police investigating the incident. Once handcuffed he was beaten again and taken to the station where he was beaten again. There he was charged with two counts of aggravated assault. He was beaten once more before he was taken to his cell. During the next 10 days the Chicano was beaten several more times. The last time eight officers were involved and the beating was so severe that he died.

In Tuscon, Arizona, a disturbance at a local Jack-in-the-Box brought 50 police units to the scene. A Chicano, whom witnesses say took no part in the incident, drove his truck slowly toward the exit. A police officer walked in front of the Chicano's truck, assumed a kneeling position, took aim and fired six shots into the cab, killing the driver. Witnesses claimed the Chicano stopped to let the officer pass; the officer claimed the Chicano attempted to run him down.

In Bexar County, Texas, police officers arrested a Chicano during a disturbance at a bar. The arresting officers subdued the man by beating him with blackjacks. Once at the jail, four guards carried the Chicano into a cell, threw him in, and then kicked and beat him severely. He was later found dead.

These cases are only a fraction of the 56 the Chicano group submitted to the Department of Justice. In the remaining incidents, we report 27 other deaths, most by shooting, and numerous beatings which led to grave injuries. We have uncovered cases where innocent bystanders are gunned down by police, where witness affidavits alleging police brutality are mysteriously lost by police and are unavailable for investigatory proceedings, and where Chicanos are beaten with flashlights, blackjacks, and sawed-off pool cues before being taken into custody.

A close inspection of the facts of these 56 cases strongly suggests that, first, police engage in excessive arrests and stops of Chicanos; second, that police firearms and arrest procedures are routinely violated when Chicanos are involved; third, that excessive, and often deadly, force is commonly used against Chicanos; and finally, that police officials engage in coverups to protect officers accused of violating public trust.

The Chicano community of the Southwest believes it is being terrorized by the institutions charged with protecting the peace and administering justice. The community is outraged and it is afraid. Its anger stems from a perception that the police along with prosecutors, juries, judges act in concert to legitimatize the use of violence and intimidation against their communities. And there is fear because to be a Chicano and to be stopped by police is to run the risk of serious injury and even death.

The cases submitted to the Department of Justice, as I indicated before, represent only a small percentage of those that have occurred and are occurring daily in the Chicano communities of the Southwest. We are still waiting to see the Department's professed commitments to combat this problem pay off where it counts: in a response that broadly attacks the problem at its roots and that results in more investigations and prosecutions of police offenders.

In addition to the points made by Eduardo Pena, as I've indicated before, we have urged the Department to use what leverage it has to withhold Federal funds from police departments with a record of police abuse and brutality. We have strongly supported the fullest use of the Civil Rights Act to encourage the hiring of more minorities on police forces throughout the Southwest. We have suggested that the Law Enforcement Assistance Administration could do much more to promote the reform of policies and practices that lead to excessive use of force. This is an area, we think, where new law is possible and necessary, and we encourage the Commission to do what it can to draft legislation and to see that it is submitted to appropriate persons. We also have asked that LEAA expend more resources for funding of police-community relations projects. Finally, we are on record as favoring the expansion of the Community Relations Service in the Department of Justice.

Thus far, the Department's actions give us little hope that ending police brutality in the Southwest is a real priority for it. We have had no response regarding our recommendations for a broad national remedy; similarly, many of the cases we have submitted appear to be lost in the interminable review process that precedes decisions to prosecute.

Despite this discouraging beginning, MALDEF and the Chicano community have taken steps to bring police brutality to an end. For example, MALDEF is co-counsel on a suit against the Department of Justice that challenges its failure to prosecute in one of the more egregious of the 56 cases. Last May, MALDEF organized a seminar on police abuse that brought together 25 Chicano leaders in an unprecendented display of unity and opposition to official lawlessness; and most recently, MALDEF and other major Chicano organizations met with police chiefs from five large Texas cities to try to impress upon them the need for immediate reform.

These efforts will continue so long as Chicanos must fear for their personal safety when they encounter the police. We are hopeful that such events as the one the Commission is holding today will hasten the development of an aggressive and effective response from the Federal Government; for despite the best efforts of private groups, police misconduct is increasing, and a Federal role is important in ending it.

Thank you.

CHAIRMAN FLEMMING. Thank you very much.

These panels have been set up in such a way as to allow a few minutes after the presentations by the members of the panel for exchange between members of the panel if they desire to carry on any dialogue with one another on any of the points that they have raised. Also, the members of the Commission and the Staff Director or General Counsel may want to raise a question or two. We have about 10 or 12 minutes we can utilize in that way. It can be carried on very informally, although this is not a very informal setting; nevertheless, it can be carried on in an informal manner. Are there any members of the panel who would like to address any questions to any other members or members of the Commission or comment on any comments that have been made by any members of the panel?

COMMISSIONER FREEMAN. First of all, I want to thank all of you for your very excellent presentations. I have a question concerning the various complaints—and from almost all of you, there has been a number on complaints. What seems to be helpful is, if you know whether the number, Mr. Meyers, if you have included in your presentation any numbers that are also referred to by other panelists, or if we were going to try to find the total number of complaints to which the five panelists are referring, if there would be any duplication and also it would be helpful to know the time span.

MR. MEYERS. I do not think there would be any duplication from the presentations I have heard this morning. I must say that I am the representative of the national office of the NAACP, and by reference, I made allegations and complaints in terms of the number of complaints we have received from our branches. We have 1,700 branches in this nation, in every community practically in the country, and police abuse and brutality cases are certainly at the top of the list of complaints we receive. You can regionalize it, and I would agree with the representatives from MALDEF that certainly the Southwest seems to be a place where there are many complaints of police brutality against black people and Hispanics. But in New York City, it is certainly just as troublesome, and we have had complaints from almost every region of the country.

Now, I must say to you that we would most gladly and willingly provide the Commission with that data and the source of the complaints we received in our national office from our branches across the country.

Also, I wanted to say what I did bring some complaints with me, but in the interest of time I did not read them, but they range from verbal abuse to race epithets, excessive physical violence, and the unreasonable, unjustifiable use of firearms.

MR. PENA. Also, I don't believe the cases are duplicative. I think they are separate. The cases that we have submitted to the Justice Department are not all of the police brutality cases that exist. This is only the tip of the iceberg. Police brutality is almost like rape. You don't report actions by the police against individuals, because they are going

to come back and hit you even harder next time. So that these cases are the facts we have been able to gather on behalf of some rather brave individuals, those who are still alive—there are not very many of them—because they decided to take a stand and give us the information so that we can report it and document it, but it's only a very small part of what actually happens out in the community.

MR. SCHACT. I would add one thing. We are preparing a yearend report of the 56 cases, and we will assess the status, including the Department of Justice's timetable for completing investigations that are pending, for completing review process that may be going on within the Civil Rights Division, criminal section, as well as reporting on those cases that have been closed. We will be happy to share that with the Commission when it is completed, probably early next year.

CHAIRMAN FLEMMING. I appreciate that very much.

COMMISSIONER SALTZMAN. Mr. Reynolds, you indicated that the police unions are the source of a great deal of opposition to affirmative action. Do you have recommendations as to how that problem might be ameliorated?

MR. REYNOLDS. This problem seems to come to the courts after long and tedious suits, and these court actions which seem to have the greatest impact go over years and years, and you'll find that persons that were going to be affected are no longer interested or the entire segment of the population has been turned off of the whole process.

My recommendation would be that part and parcel of funding from Federal sources, particularly by the Office of Civil Rights Compliance, you have certain guidelines that they mandate that recipients fulfill before they can receive funds, requirements that each revenue-dispensing agency of the Federal Government make mandatory; that is, one that has penalties for civil service commissions to move away from their standards of which most were set up in 1920–1925, modeled after something which came out of England. And I go from one of the examples, or several of the examples which were given recently, a certain amount of teeth a person must have, or like we still have in some places like right outside the city of Cleveland and police officers must be 5 foot 9 when the statistics show that even having a height requirement of 5 foot 8 you are eliminating 90 percent of the female applicants because the average female is far below 5 foot 8. And also you are eliminating 44 percent of all males.

It has to be a broad-based, enforceable mandate coming from the funding agency that says, "You will change." You cannot say that, "We can't change because the civil service commission won't allow it"; and this is the excuse given by most police agencies, "Our hands are tied because the civil service board makes the laws. We would like to do it." In the agencies that have the power to do it, you'll find that, "We can't do it because we receive too much flak from our civil service board or our line organization."

The unions themselves represent a constituency and that constituency happens to be the majority officer, and they look at any minority or female officer as somewhat threatening to their position. The regulation, the impetus for the change must come from a funding agency, such as the office of Revenue Sharing, the LEAA, or rules and regulations by the Civil Rights Commission.

COMMISSIONER RUIZ. Mr. Pena, with relation to the 56 cases—I noticed a sense of urgency—that have been submitted to the Department of Justice, what do you attribute to the lack of high priority; do you have any idea or thought along that subject?

MR. PENA. I really wish I knew. When we talk to the Justice Department officials, they indicate—and I tend to believe it sometimes—they are concerned about this problem and they want to do something about it; they are just about to do it tomorrow or the next day or the day after. They are really going to do something about it. They keep saying they can't tell us precisely what they are going to do because it would prejudice the case. "We can't discuss it that much, but, by God, we're going to do something about it tomorrow or in a few days."

But we wait months and months and nothing happens, and nothing has happened. I just don't understand. They are very, very determined to do something about it when you talk to them, but nothing happens.

COMMISSIONER RUIZ. I gather from what you said that you are simply getting lipservice?

MR. PENA. Well, it's worse than that. They are misleading us. We are being misled. They tell us they are just about ready to do something and something is about to happen, something dramatic, but something doesn't happen; they forget it. I don't know why, because it's actually misleading.

CHAIRMAN FLEMMING. On behalf of the Commission, we wish to express our appreciation to all of the members of the panel for being here with us and for making these presentations. It's very helpful to us as we get into this very important area. Thank you all very, very much.

THE POLICE ROLE

COMMISSIONER FREEMAN. We will next be considering the police role. Basic to any study of the police is an understanding of the police role. The issues of selection and training cannot be usefully addressed without an understanding of the role which the individual is to play once he becomes a police officer. Performance cannot be properly regulated nor can its success be evaluated until it is determined what end it is to serve. For this reason, we are addressing it first. It will be handled explicitly as a subissue of the first panel, and we hope that later panelists will address the assumptions as to the role which underlie their positions.

The following panelists will make presentations in the order in which they are listed, and I will at this time introduce just two of them. Richard A. Myren. Dean Myren is the dean of the School of Justice of the College of Public Affairs, American University. He was formerly dean of the School of Criminal Justice of the State University of New York at Albany. He was visiting professor at the Institute of Criminology at Cambridge University for a year of his tenure as dean at SUNY.

Dean Myren holds a law degree from Harvard Law School. He has authored numerous publications covering the role of the police, the relationship between higher education and criminal justice, and the role of State governments in criminal justice higher education.

Next is Paul T. Takagi. Dr. Takagi is a professsor at the School of Education, University of California at Berkeley. A that institution he earned an undergraduate degree in psychology. He has an M.A. and a Ph.D. in sociology from Stanford University. For 13 years he has taught criminology at the University of California at Berkeley. One area of emphasis in both his teaching and his research has been police use of deadly force. He has co-authored one book and written some 35 articles, many of which deal with that issue.

Dean Myren.

STATEMENT OF RICHARD A. MYREN, DEAN, SCHOOL OF JUSTICE, COLLEGE OF PUBLIC AFFAIRS, AMERICAN UNIVERSITY

MR. MYREN. Members of the Commission, distinguished colleagues, first of all, let me express my appreciation for this opportunity to state a brief summary of my views on the police role to the Commission in this forum. They are set out in more detail in a chapter of my book to be published by West next year.

To keep our discussion on a practical level, we must recognize how and by whom the police role is defined. Our police agencies have been molded by the people who have created, led, and staffed them. Today's leaders recognize their agencies as being parts of the overall criminal justice system, but are not as often aware that their agencies are also parts of the economic, governmental, legal, political, and social systems of their particular regions. None of these systems is congruent with another, but all overlap to include segments of police agency operations. Police departments are integral to this complex system of systems.

Not all police agencies play the same role or perform all of the same functions. But a set of rules and functions can be described from which each agency takes those attributes that are required for its particular time and place. Regardless of the specific role assumed by a police agency, there are both strengths and weaknesses in its performance which can be attributed to its profile. Modifications are constantly being made, some in an attempt to maximize the strengths and minimize the weaknesses in the public interest, others with less laudable goals.

Many mechanisms operate in definition of the police role. In addition to forces within the police agency itself, at least four kinds of external influences must also be reckoned with: private citizens, both as individuals and as members of pressure groups; legislative bodies; courts; and executive agencies. Each of these influences merits further consideration.

Despite a great deal of political alienation on the part of the U.S. citizen, he or she is still an effective arbiter of governmental function. This discussion might well not only begin but end with this same important fact. Citizens as individuals can and do influence their government at all levels—Federal, State, and local. They do this with both formal and informal contacts, with the latter more common on the State and local levels and the former more frequently used at the Federal level. At the local level, the interest and stated convictions of influential citizens can be and frequently are considered very seriously by police administrators at vital points in the decisionmaking process.

Private citizens also express their concerns and exert pressure on governmental agencies, including the police, through membership in organizations designed specifically for that purpose. There is strength in numbers, and that strength must be considered in a government which, like that of the United States, relies ultimately on the support of its citizens for legitimacy and source of authority.

Citizens' pressure is applied not only to the police directly, but also to each of the other governmental enemies—entities engaged in police role definition. That slip may have been prophetic. It is probably true that most police executives pick and choose from among the various persons and organizations attempting to influence their decisions. But those persons and organizations who are unsuccessful at first, however, will frequently not give up, but instead will shift their pressure to some other center of influence, such as, possibly, the legislative bodies.

Perhaps the most obvious source of the police role definition is legislative action. It may not be so obvious, however, that this legislative effort may be of three different types. Not only do legislatures enact statutes which deal directly with police organization and operation, but they also define the police role by enacting substantive, criminal law provisions and by controlling the purse strings. It must also be remembered that controls may be enacted not only by Congress and State legislatures, but also by legislative bodies at the county, city, and special district level.

Courts also come into the act. Although courts and the judges who preside over them do not handle fiscal matters of importance to the police, their influence does parallel the other two roles played by legislative bodies. Basically, they determine which areas will be brought under criminal jurisdiction by making decisions on, for example, chronic alcoholism and narcotic addiction. In establishing the content of due process, courts also have a very real impact on police operational procedures. For example, courts provide the rules govern-

ing how a confession may be obtained, when and how a house may be searched, and when an arrest can be made without a warrant.

The definition of police role is also influenced by a number of different, separate, executive agencies operating at several levels. Perhaps the most important of these is the office of the prosecutor. This official, whether elected or appointed, has almost complete control over deciding whether he or she will or won't prosecute a given case. The prosecutor's decisions depend on a vast variety of factors, some more justifiable than others. The net result of his or her action, however, is clearly that of determining, to a certain extent, what roles the police will play.

In addition, the prosecutor determines the level of proof that must be in hand before he or she will proceed with a given case. If that level is set too high, the police will begin to ignore a category of violations, realizing that they can't possibly gather enough evidence to satisfy the prosecutor with the resources they have available.

Another way in which executive action can influence the police role is through the allocation of fiscal resources granted by legislative action. Although general outlines may be set by the legislature, some kind of executive control over the details of spending usually exists. Money originally intended for one use may be diverted to another.

Executive officers, such as the Governor, county manager, or mayor, may also set policy for the police agencies under their control. A Governor may decide, for example, that the State police shall not operate within the limits of any corporate town or city without a specific request from that municipality, even though such localities are included in the statutory grant of jurisdiction to the agency.

In these ways, executive officers outside the police agency do participate in police role definition. This process also continues within the police agency. The chief and his or her immediate assistants allocate the resources available to the department among the various line divisions, dictating by this action the broad limits of activity in each of the several areas.

Further limitations may be imposed in the form of policy decisions aimed at compliance with the perceived desires of public, legislative, judicial, or outside executive wishes. Additional policy decisions will reflect the professional judgment of administrators as to how they can best make their departments measure up to whatever standards the community seems to be setting.

When all of the above influences have made their mark, the officer who actually does the policing of the community adds final input to the definition of the police role. That input may differ from time to time and from officer to officer, depending on a number of variables.

The officer's input is usually designed, at least in part, to give him or her as much job satisfaction as possible. The content of this job satisfaction will vary with each officer within the permissible limits of the system. Part of that content will usually be determined by the reaction of the public, with which the officer must deal on a daily basis.

These examples make it obvious that a variety of executive officers, both within and outside police agencies, also participate in police role definition in direct and indirect ways.

In summary, it's clear that there are many sources of police role definition, including private citizens, legislators, judges, and executive officers. It also seems apparent that the number of sources cannot be reduced and that efforts to impose severe limits on the contribution of any particular source are apt to be effectively circumvented. Meaningful discussion of the police role must recognize the reality of an extremely complex definitional process.

In the United States, four approaches are regularly assigned to police agencies. These are enforcement of the traditional criminal law, maintenance of order, enforcement of convenience norms, and performance of service function. Within the four categories, the police have been assigned or have assumed a wide variety of activities. In addition to being responsible for preventing violations of the traditional criminal law and gathering evidence of the violations that do occur, police have been charged with achieving community conformity with the rules designed to make the close-knit life in industrialized, urbanized America acceptable despite the population densities involved.

Health practices, relatively unimportant in rural areas, have become vital in our cities; their supervision has been delegated frequently to the police. The regulation of traffic necessary to our modern commercial life has also become an established police function. In addition, the police have been assigned or have voluntarily assumed responsibility for a wide variety of other service activities, such as operating ambulance services, jails, dog pounds, and recreational facilities; collecting delinquent taxes; furnishing chauffeurs for executive officers of the government; performing clerical functions for courts; licensing and regulating certain businesses, such as taxicabs, pawnbrokers, night clubs, etc.; and escorting funerals and parades. Some of these are relatively widespread activities; others are almost unique to certain departments. Almost every department, however, has its share of both common and uncommon service responsibilities.

In addition, every department is charged with maintaining order in the community. Controlling crowds at political rallies, demonstrations, and sporting events; ensuring that the patrons of bars and other public facilities don't disturb their neighborhoods; and making sure that private parties don't become public nuisances—these are all part of this order-keeping function.

Yet, there's another kind of consideration that is also important. As one kind of unit in the criminal justice system, the police agency has four facets, all of which must be taken into consideration. One of these is the legal prescription as to what it should do. This describes the agency as it has been created and given responsibility by formal legislative enactment.

A study of any particular agency should probably begin with this facet, but certainly it cannot end there. It must move on to the second facet, the formal organizational and operational structure as established by the top administrative officials of the agency, the way the brass thinks they ought to run. Still a third facet must then be examined: the informal structure implemented by those who actually discharge the agency functions in day-to-day operation. And finally, in any study concerned with effectiveness of operation—a key element of which would be the extent of citizen support—still a fourth facet must be considered: the image of the agency held by differing segments of the society, as demonstrated here this morning.

Each of these four facets differs from the other three, and the image held by the public will itself vary according to the social subgroup whose view is being considered. Sometimes this image of what the people believe the agency to be is actually more important than what it really is.

Thus, we see that police agencies are charged with four different kinds of functions according to their role as it's currently defined in the United States. In carrying out these functions, they present four different faces. This complexity of current organization and operation must be considered by anyone who wishes to study the role of the police in our criminal justice system with a view to change.

Looking now to problems arising from the current police role definition, they can be associated with the functions from which they spring. Performance of service activities leads to police budget inflation and the consequent distortion of the apparent costs of police tasks; that leads to prevention of professionalism in the police career group, to distraction of attention away from the primary tasks of combating traditional crimes and maintaining minimal order, and to prevention of more efficient performance of the service functions by specialized agencies.

The good will that the police are allegedly to earn from these services is offset by bad will attributable to poorer performance of basic police tasks. Other more effective mechanisms can be devised for obtaining the information useful in crime control and order maintenance that is sometimes alleged to flow as a byproduct from service activities; governmental economy attributed to performance of service functions by the police is really illusory.

In addition to the first three problems mentioned above as attributable to police performance of service functions, enforcement of convenience norms by police agencies also has two additional detrimental effects. First of all, it serves as a source of corruption; and secondly, it generates ill will toward the agency. Any resulting information useful in primary police tasks can again be obtained in other ways, and alleged governmental economy is again probably without foundation.

Problems which arise from enforcement of the traditional criminal law and established order-maintenance procedures differ somewhat.

One group stems from a less than careful consideration of which social problems should be assigned for solution to the criminal justice system. The prerequisite of criminal conviction before governmental units can offer certain educational, treatment, and welfare services is both unwise and unnecessary. Police agencies have also been overzealous in attempting to anticipate civil disorder, confusing legitimate political dissent with unlawful subversive activity.

Another group of police problems associated with carrying out primary police tasks stems from poor police organization. Leadership of the police career group has not yet met the challenge of carefully differentiating the clearly *police* component in their basic tasks from necessary support services.

A second unmet challenge is the recognition that the heart of the police task is judgment-making about crime and order-maintenance situations. Yet a third is that of providing the working conditions, salaries, and mobility necessary for the building of a true police profession.

All of these problems arising from the current definition of the police role as a unit of the criminal justice system are quite serious, and they must be given the attention that they deserve.

A great deal of hard data exists today on the extent to which police agencies are spending their time and effort performing miscellaneous service functions. The consensus is that the percentage of time spent in this way is very high. Although the time spent on service functions varies from department to department, the overall amount is always appreciable.

Some service functions do not interfere with primary police tasks and should probably be kept. However, many do so interfere and should be assigned to a new department of public services in the municipal government. Much of the problem with police agencies today is not a police problem, but a basic city government problem.

One of the principal advantages of creating a new department of public services to take over many of these police functions would be that educational, treatment, and welfare costs would no longer have to be hidden in the police budget. This would reduce the inflation of that budget and the consequent distortion of the apparent costs of order maintenance and crime control. It would also contribute greatly to development of a true police profession, allow the police agency to concentrate on order maintenance and enforcement of the traditional criminal law, and allow others to perform the needed nonpolice services at greater economy and with greater efficiency.

We also, I think, should probably eliminate some of the convenience norms. In addition to condemning serious antisocial acts, most societies have established many convenience norms. Minimal conformity to these norms is necessary in order for a society to achieve maximum freedom for all. It doesn't do any good, for example, to give members of a society freedom to travel the roads on Sunday if the roads are so choked with traffic or so dangerous that it's practically impossible

to get anywhere on them. Again, hard data indicates that an appreciable amount of police time and effort is spent on controlling violations of these norms. It isn't, however, as easy to argue against this kind of police activity as it is to argue against police performance of service functions.

Therefore, I believe that careful attention should be given to the possibility of establishing, also at the municipal level, a department of inspections that would be responsible for enforcing the vast majority of convenience norms. The elimination of these regulatory costs from the police budget would provide a more realistic picture of the police cost of order maintenance and crime control; development of a police profession would be encouraged; police agencies could concentrate on maintaining order and enforcing the traditional criminal law. It would also eliminate a source of corruption and ill will toward the police.

A careful look at the success of past efforts to cope with certain social ills by means of criminal law processes may indicate that other social control mechanisms may be more effective. For example, court decisions leading to questions of constitutional validity have provided the added incentive for making the cases of the narcotics addict and the chronic alcoholic applicable for this kind of consideration. The use of sex offense convictions to provide welfare services to unwed mothers might well be another.

Perhaps the most difficult question to be faced is that of whether police can or should be both peace officers and general public servants. It's suggested that they should be primarily peace officers. This view argues that better attention to the basic police tasks will do more than social service to eliminate some of the major upheavals in our urban centers.

If most service functions and some convenience-norm enforcement have been eliminated from police responsibility, as recommended, many of the more friction-generating situations would be handled by the new department of public services and inspections, both of which will have personnel available to answer such calls. It would also be necessary to strengthen other social control mechanisms in our cities that lie outside the criminal justice system. General governmental social and welfare services would have to be brought to the point where many of the friction-inducing conditions no longer exist.

Then, too, self-help would have to remain an element of life in these United States. Learning how to live together peacefully is a process that must continue. Government can never carry the entire load.

Eliminating most service functions and much of the responsibility for enforcing convenience norms would in turn eliminate many of the boring, unstimulating, and unchallenging activities that now plague the police career group. It would also make it possible to carry out organizational changes that would provide working conditions compatible with the newly defined police role. One of the first such changes would be the abandonment of the quasi-military structure of police organization.

Along with these organizational changes must come a realization that there are areas within the police task in addition to those of administrative and management that require the exercise of mature judgment. Management is an important area, and it should have its high level of compensation; but it should also be possible for a police officer to remain in one of the other areas of specialization, working along with people, moving from handling lesser to ever more complicated and serious kinds of offenses, and should be compensated accordingly. This means that there would be a number of compensation hierarchies in police agencies equivalent to that given to administration.

Basically, it's suggested that a police agency should be able to offer a potential recruit a variety of specialized careers. There is no obvious need for every officer to be able to perform every police task; each should be able to serve and progress in a chosen field of interest. In addition to changes that would make it possible for an agent to enter policing with a particular career in mind, or to make such a choice early in his or her service, other changes should be made to enhance career opportunities by allowing greater national mobility.

If this newly defined police task were carried out in a reorganized department, some drastic modifications of procedure would also be required. Every department should work toward an ideal in which every police officer would have a specific order-maintenance or crime-situation-oriented reason for being where he or she is and doing what is being done at every moment of service.

When an adequate data base has been built up about the crime pattern of a given community, all police personnel not required for order maintenance should be concentrated on solving previous crimes and intercepting persons attempting to commit new offenses. One aspect of this activity would be the answering of citizens' calls for assistance. All such calls could come to a central city switchboard. This switchboard, in turn, would relay service calls to the department of public services, convenience-norm enforcement calls to the department of inspections, and crime and order-maintenance calls to the police department.

In summary, police agencies in the United States play roles dictated at least in part by structural determinants imposed by their cultural heritage. Defining that role is a complex process in which many influences are felt. The current role is described differently by different analysts, but all agree that it is not ideal. Changes are necessary.

Thank you.

COMMISSIONER FREEMAN. Thank you, Dr. Myren.

Dr. Takagi.

STATEMENT OF PAUL T. TAKAGI, PROFESSOR, SCHOOL OF EDUCATION, UNIVERSITY OF CALIFORNIA AT BERKELEY

DR. TAKAGI. Thank you for inviting me. I am very pleased to be here. I was instructed that I have only a few minutes so I have a prepared statement. Please forgive me for reading the prepared statement, but in the interest of time I think it would go much more rapidly if I were to read it.

I intend to proceed in a roundabout way to address the topic of "the role of the police." The purpose in doing so is to emphasize and illustrate the need to analyze contemporary policing as an integral part of the political economy. To put it differently, the police institution is not a self-contained entity, isolated from what is going on in the rest of the society. An analysis of the police requires simultaneously an analysis of the larger society. To illustrate this point, let me begin with some observations of a scholar from Italy.

This past year I sponsored a young law professor from the University of Bologna to study in the United States for 1 year. We spent many hours talking about ultraleft groups in Italy which, at the time, were receiving considerable press for the kidnapping of Moro and for other violent activities attributed to these groups.

He said that in Italy today, and for over two decades, the most serious problems are unemployment and inflation, the very same problems plaguing the United States today. He said that 75 percent of the unemployed in Italy are under 30, and 25 percent of these are university graduates. Significantly, members of the most extreme left groups come from petty bourgeois backgrounds. He said these unemployed young people were initially identified with the two major political parties in Italy: the Christian Democrats and the PCI, or the communist party. But as the crises in the political economy continued, they broke away to form, on the one hand, ultraleft organizations and, on the other, fascist youth groups. His analysis is that the ultraleft groups attack primarily the police and symbols of capitalism. The point here is that there is a connection between police and capitalism.

There is a new set of writings in the sociological literature in the United States which reflect a similar concern in this country. These studies begin with the observation that:

> Unemployment among young workers has emerged as an intractable social problem in the United States. Thirty to fifty percent unemployment rates among inner-city youth have persisted in the past few decades, even during periods of economic expansion, and have not decreased with policies of austerity-oriented governments addressed to priorities of inflation and private sector growth. With the collapse of the college job market in the 1970s, there is a new form of structural unemployment affecting the privileged young.

These writings note that—added to the large number of black youth who have experienced chronic unemployment for decades—many

young people in the United States are unable to find employment commensurate with their level of education, and many others are unable to find any jobs at all. These sociological works suggest that the young workers' rising expectations and their new awareness of rights may foreshadow a more assertive and rebellious generation of workers.

Daniel Bell, a sociologist, calls it an attitude of entitlement; that is, young people now believe they are entitled to good jobs. Bell notes that the revolution of rising expectations in the past 25 years is now being transformed into a revolution of rising entitlements. He says this may take the form of militant political action in demands for minimum family income or the demand for the assurance of lifetime employment. Bell warns that these demands will increase in fervor, not only from minorities, the poor, and the disadvantaged, but from all other segments of the population as well.

Professor Bell, who is not a radical and is far from being a Marxist, locates this new culture of entitlement in the structure of capitalism itself. Before I get into that, let me mention briefly some findings from a recent study of unemployed young workers.

Charles Derber, studying unemployed young white workers in Boston, reports that a substantial majority in his sample, 75 percent, asserted that they are entitled to a good job. Regardless of their educational levels, young people believe that having a good job is a right. This is a significant finding because not too long ago American people believed that a good job presupposed personal achievement through education as a means to a good job. To these unemployed young workers, a good job is viewed as a universal right.

Derber also reports that these young unemployed workers do not blame themselves for their situations, but blame society; and some of those who blame society support a revolutionary change to socialism. The United States, of course, is not Italy, but the preconditions of what happened in Italy exist today in the United States; that is, a large pool of young workers, now increasingly being filled by the college educated, who believe that there is something fundamentally wrong with a society that cannot provide good jobs, decent housing, adequate food, and health care for all of its members.

A fundamental axiom in the social sciences—and I believe we should pay attention to it, because we don't have too many axioms in the social sciences—is that no matter how severe the repression, when people are pushed to a desperate minimum, they rise up in struggle despite overwhelming odds. We have all seen this in our lifetime, and this has been true in the history of all civilizations. Today in Iran, Nicaragua, Angola, Zimbabwe, Palestine, Watts, Newark, Detroit, and in countless other places people have struggled. People's struggles toppled two U.S. presidents and have created independent nations all over the world.

So, to understand the role of the police, we need to understand the axiom of repression and struggle. For example, the growth and expan-

sion of the police apparatus in the United States since the turbulent sixties had little to do with fighting crime. It was strengthened primarily to crush peoples' struggles, which at that time were the struggle of black people and the antiwar movement.

Let me now proceed to what Professor Bell meant when he locates this new culture of entitlement in the structure of capitalism and how this structure is related to the role of the police. Since I've been allocated just a few minutes I'm not going to present the thesis in an elegant fashion, but to try and highlight what Professor Bell was talking about.

Briefly, the system under which we operate is a system of capitalism in which a very small minority of individuals dominate the entire social system by controlling the system of production; that is, they control the factories, banks, railroads, they control legislators, and so on. The fact that this is the case indicates that this class of people, called the ruling elites, exercise power over the entire society, and they intend to keep it that way. They have several functions which they must carry out in order to exercise that power.

They have to be able to make the system operate reasonably well to provide for certain material benefits that are supposed to be the advantages of living in a capitalist system. But they must also provide spiritual benefits, such as freedom, dignity, rights of the individual, equality, and so on. In other words, the system is made up of a set of material and political benefits. The political benefits are sustained by the values of liberalism laid out in such documents as the Declaration of Independence, Bill of Rights, agencies such as this one, and the host of legal decisions that have come down through the years.

But it doesn't take a great deal of imagination to discover that the social system does not operate on those values. Some people are more equal than others; some people have wealth and others don't; and some people control the lives of others. This is what is meant by the structure of capitalism where it contradicts a social reality, where people go hungry, do not have jobs, and now, increasingly, are confronted with the problem of trying to get by in a state of inflation. The structure of capitalism means that it is based upon exploitation, domination, and the control of one group of individuals over the resources which the community as a whole needs in order to survive.

Since the reality and the ideals are incompatible with each other, the state and related agencies, such as public schools, political parties, mass media, carry out as best they can to mask the contradiction by administering the system in such a way to handle the repercussions, for example, the struggles of people who have discovered the extent and depth of this social hypocrisy. To put it very simply, there are two basic ways in which the state can repress the possibility of dissent—violence and mystification. The state relies on both techniques and blends them in very complex ways.

The prime role of the police is violence, although some efforts have been made in the past decade to employ the use of velvet gloves by hiring women, establishing community relations divisions, and emphasizing education and training. When the state murdered Mark Hampton, that was an act of violence exercised in a very clear, commonsensical use of the term "violence." And I don't have to cite a list of documentations because the panel earlier this morning talked about the horror stories that the police create throughout this country, particularly upon minority groups. But the role of police in recent years has been intelligence work to prepare for the possibilities of mass dissent and protest, and I think, in order to understand the contemporary role of the police, that we should come to terms with the fact that the function of the police is domination.

Many of us were shocked when we saw on television Bull Connor siccing dogs on civil rights demonstrators in the South. But it didn't take us very long to understand that the police in the West and North were equally repressive and much more sophisticated in the use of violence.

Now, ordinarily, a capitalist state is not going to stay in existence very long if it has to rely on overt violence in too many instances. The basic mechanism through which it stays in power is by winning the allegiance of the people through persuasion. One sees this in the proliferation of cop shows on television to persuade people that cops are decent human beings. But the state also tries to obtain the loyalty and allegiance of people by persuading them that there are benefits by remaining in the system: *Brown v. Board of Education*, the short-lived affirmative action program, the hiring of a few blacks here and there to show that minorities can get ahead. But in the final analysis as the state engages in this contradictory activity of both violence and persuasion—in the final analysis, the role of the police in contemporary America is dominance, repression, and violence.

Thank you.

SELECTION AND TRAINING FOR THE POLICE ROLE

COMMISSIONER FREEMAN. Thank you, Dean Myren and Dr. Takagi.

We have heard an analysis and definition of the police role. We will now proceed to the topic, "selection and training for the police role." Dean Myren and Dr. Takagi will sit on this panel as discussants. The following panelists will make presentations, and after all the presentations there will be time for interaction among the discussants. Because there are four of you, I will introduce you each in turn.

First, Dr. Eisenberg. Dr. Terry Eisenberg is a psychologist and is president of Eisenberg & Associates. He has served as a consultant to over 50 law enforcement organizations regarding police personnel practices. He has served as program director for a 2-year project designed to improve police-community relations in the city of San Francisco. As a research scientist with the IACP [International As-

sociation of Chiefs of Police], Dr. Eisenberg developed standards for police selection, training, promotion, and performance appraisal. From 1973 to 1976 he worked as a police officer for the San Jose Police Department. He has written extensively in several areas, among them, police personnel practices, job stress, and police-community relations. Dr. Eisenberg will be a participant on a subsequent panel entitled "evaluating and monitoring police performance."

Dr. Eisenberg.

STATEMENT OF TERRY EISENBERG, PSYCHOLOGIST, SAN JOSE, CALIFORNIA

DR. EISENBERG. Thank you. I would like to make my remarks brief and focus predominantly on the areas in police selection and training in terms of the state of art—at least as I perceive that state of the art. I have been involved in the selection and training of police for approximately 10 years, and over that period of time, in my judgment, there has been an overall improvement of the recruitment and selection and training of police personnel. I think this has been particularly evident in the past 5 years.

I think we have seen some very noticeable changes in the number of selection standards or requirements, including such requirements as written entrance examinations, medical examinations, physical agility tests, height-sex requirements, psychological appraisals, oral board interviews, background investigations, and other requirements such as preemployment residency and visual acuity requirements.

I think that to a large extent these requirements are far more job related now than they used to be. They represent bona fide occupational qualifications more so than they did 5 to 10 years ago, and methods of measurement that we have right now, although certainly not perfect, are certainly better than they were. In this regard, I don't think there is any question—at least in my mind—that the state of the art in police recruit selection has in fact improved. A lot of this, I think, has been due to a greater variety of agencies. Certainly, the Law Enforcement Assistance Administration and its research efforts have improved. The efforts which I think have been conducted presently in the police selection area, research which has been conducted by a great variety of other agencies, including the Police Foundation and others, and I believe the police has also benefited in this change.

There was a comment made earlier by Mr. Reynolds about teeth as a requirement for entry into the police service. I recall seeing a Detroit recruiting brochure about 8 or 10 years ago, and the front of that brochure had a statement. "When I first applied they told me I didn't have enough teeth." "Man, I'm not coming on this job to bite anybody." And I think to a certain extent these irrelevant requirements have been modified and have been changed over the past years.

It's really impossible to separate the training function, the recruit training function in the selection process. In my mind, they are in-

tegrally related to one another and that really the recruit training process to a large extent is an extension of the selection process. In this regard, I think we can't separate the recruit training from the recruit selection procedures.

Selection, as much as it has improved, is still an art. It's still judgmental. There are still a great variety of mistakes that we make, and in this regard, some of those mistakes can be compensated for during the recruit training process. Ordinarily, the recruit selection process is followed by some kind of academy of various terms of duration. In most regards those academies are classroom academies, and in most regards, at least in my judgment, once again, those academies have very limited impact on the role definition that police officers assume and the way they learn to create and to establish their duties.

One of the things that has occurred over the past few years is a rather involved interest in what is referred to as the field training programs. Field-training recruit programs are basically a response to the limitation of academy classroom training programs and are basically on-the-job training programs. They tend to at least try to adhere to some of the following characteristics and conditions: a recognition and adherence to the learning-by-doing principle, in contrast to what frequently is the case in the academy—it's considered part of the selection process, and in many cases up to 25 percent of the recruits are involuntarily terminated from those programs; that they usually occur after a classroom academy and may be as long as 2, 3, 4 months' duration beyond the classroom academy; that they involve pairing recruits with field training officers who have been selected and trained and ideally reflect the philosophy of the police organization and the community; that performances are evaluated by specific job tasks that police people should learn to perform and that they're defined by standards and rated in performance with regard to performance on that test. These training programs are a marked improvement on what we have seen in the past.

It's important to consider the fact that these training programs occur, exist, are developed and administered in the culture and context of police culture. In that regard, there are some issues that are important with regard to evaluating those programs and considering the value of those programs. Those kinds of programs, for one thing, are solely a judgmental process. It's still a matter of police officers evaluating other police officers and the values and mores that are implied. A field training officer can make or break, in most cases, a recurit in terms of their initial confidence, which is indeed very fragile and very easily fractured. This is particularly true with women and minorities in regard to their early field training experiences.

There is a tendency for technical skills—for example, how to use a radio or self-defense tactics—to be overemphasized to the detriment of softer, human relations skills. And in this regard, the law enforcement orientation as opposed to the service orientation, which Dr. Myren

referred to in different terms, becomes very apparent. There is a tendency for there to be more evaluation than training, more judgment than training of a recruit. The ideal and the objective is basically to eliminate the incompetent—that is the goal—but, in some cases, it can eliminate not only people who are incompetent, but people who, in the minds of the field training officer and the departments, don't seem to fit into the rest of the group and to their peers.

These are some of the limitations of any training program, any recruit training program, particularly the more popular field training programs which exist in law enforcement today and are beginning to be much more popular than they ever have before.

Thank you.

COMMISSIONER FREEMAN. Thank you.

Gwynne W. Peirson. Dr. Peirson is senior researcher, National Minority Advisory Council, Law Enforcement Assistance Administration. He holds a B.A., M.A., and Ph.D. in criminology from the University of California. For 23 years he was a police officer with the Oakland, California, department. He is the author of *Police Operations* and has published several articles, some of them dealing with racism and the criminal justice system.

Dr. Peirson.

STATEMENT OF GWYNNE W. PEIRSON, SENIOR RESEARCHER, NATIONAL MINORITY ADVISORY COUNCIL, LEAA

DR. PEIRSON. Thank you, Commissioner Freeman.

The necessity of my remarks about police training, police selection, have to go back to the role of the police, because we simply don't have any unanimity as to what the role of the police is or what it should be. What we tend to do is to decide on a department-by-department philosophy on what that department should be about and what it should be doing and what its aim is, and to a great extent, the department makes these decisions itself, without input from the community.

We see the type of thing where the police role is defined as representing the power structure of the community. That type of thing is going on in Dade County, Florida, now where migrant workers are being arrested because of their demonstrations or attempts to get themselves more money. We see it when we start selecting people to find what type of person we want, and now we are getting into an era where we are talking about getting better educated people for the police, and we start talking about the difficulty of getting minorities who are qualified. And then, we get into a problem where we don't know what we mean by *qualified*, and we fail to recognize that *qualified* means different things to minorities, particularly when you are looking at the role of the police as it is.

Now, the police role is an occupation that generally requires a high-school education or less, and yet, we keep talking about college-educated people for that role. Generally, police themselves view that as a middle-class profession, but at the same time, it's not viewed as a middle-class profession by most minorities. To most minorities who greatly value their hard-earned college education, becoming a police officer is taking a step backwards. They just can't see at least the decent rationale for getting this education and going to a job they could have gotten with a high school education or with a GED. So we have that type of problem. That is only one of the problems.

The other problem is the proliferation of what we generally call criminal justice, criminology, police science programs in our colleges and universities, and they have, to a great degree, become "Mickey Mouse" type programs. Dr. Eisenberg mentioned police training several times, and what we see is that police training programs have been introduced into college curriculums. They are not education, they are not teaching, they are not getting into the question of, is there a better way of doing something, should this be done, what are the alternatives?

Instead, they are simply trying to train people to carry out the police role as it's defined by the power structure in that community. Again, this, by its concept, tends to eliminate minorities who can't deal with that type of a rationale. What we need to do is get a consensus of what the police role should be and then go about the business of structuring the police departments so that they fit into that role and then decide how we get the best-qualified people for it.

One last comment I would like to make is, still, you find many outspoken police administrators who will say the type of person they want is a person with a high-school education, or even less, who has had some military training, who is aware and appreciates a semi-military structure, who is willing to take orders without questioning. They don't want the college-educated person who is going to say, "Isn't there a better way of doing this? Isn't there something else that could be done?"

They don't want to have those hassles. The police administrators know what their job is, know who they represent, and they want to do it the easiest way possible. So again we have to go back to find out what the role should be and get about the business of filling it with the type of people who can carry out that role.

COMMISSIONER FREEMAN. Thank you, Dr. Peirson.

Gary P. Hayes. Mr. Hayes is the executive director of the Police Executive Research Forum, an organization of police chiefs formed by the Police Foundation to provide progressive leadership in the police field. From 1973 to 1976 he was the assistant to the police commissioner in Boston, Massachusetts, a commissioner whom he had been instrumental in selecting in his role as the mayor's advisor for police. As a consultant to the Police Foundation, Mr. Hayes has worked in

the area of higher education for police officers. Mr. Hayes holds an M.A. in police science and administration from Washington State University and a law degree from the University of Wisconsin.

Mr. Hayes.

STATEMENT OF GARY P. HAYES, EXECUTIVE DIRECTOR, POLICE EXECUTIVE RESEARCH FORUM

MR. HAYES. Thank you, Commissioner. I would like to thank the Commission for the opportunity to present my views. I would also like to express the support of our organization for this Commission's hearings in this very important area. Our organization was founded on the principle that open and honest debate is the best means for improvement in the field.

As I sat here this morning and listened to some of the earlier panelists, I realized how hard that can be. To listen to your faults and shortcomings is not only not an easy step, but a necessary one for a constant reminder of where we need to improve and where we need to go. So again, I thank you and voice our support.

I would like to say just a couple of words on the selection and training of the police in the area of preservation of civil rights. I have a very limited view on the impact that both selection and training can play in this area.

I gained this view because I have often heard that selection and training can be a panacea for this, that often people say that, with the selection and training, we have a vaccine for future abuses. I'm afraid that it's my view that it's more of a placebo—that it helps the spirit, but it doesn't always help the problem; that, in fact, the real answer in controlling police abuse in the area of civil rights is through active, vigorous, vigilant, committed police leadership. That's the answer.

By that, I don't mean to say there is no role for selection and training. That is in fact an important part that it plays, but only a secondary part to this active leadership. I again present my views in this way because I caution the panel to not get carried away—as I have often seen people in the police field get carried away—with this focus that the solution to our problems is the selection of officers; that we'll find the right officers, then we'll find less abuse; that if we have better training, we will train our officers for less abuse. I don't believe this is the ultimate answer. It is not a replacement, it is not a substitute to the aggressive, committed leadership that we need in policing.

But having said that, let me talk about both selection and training and briefly give you my views on what it can do. I echo what Dr. Eisenberg said about the selection being useful in eliminating the worst condidates. That is what we can hope for in the selection and what we aim for, that we can eliminate people who do not belong in the police field, who should not be officers, who are likely to abuse the rights of our citizens. That is what our selection process should aim for, to eliminate these worst candidates.

I don't know and I have not yet seen a selection process which can choose officers that are to be the most supportive of our citizens' rights, that are to be the most likely not to abuse people's rights. I haven't seen that in policing; I haven't seen it in any other field. I don't see it with lawyers; I don't see it with educators. This is not to mean that someday we will not achieve this; it just means that I think at this point in time we are being unrealistic if we look towards the selection process as a means of selecting the best officers who would be mindful of the rights of our citizens.

In fact, the data that we now have available shows that, as Dr. Eisenberg said, the selection process has improved and, psychologically, our candidates usually reflect the psychological makeup of the public; that, if there are problems with police in the abuse of citizens' rights, it is a process that takes place in the working environment and that this is what is the most likely factor to impact officers in their actions. And this working environment is what molds their attitudes, what eventually influences their behavior, and that that is a major focus that we should focus on.

An obvious point about the selection process that probably doesn't need to be said, but I will say anyway, is that it obviously should not be discriminatory; that the tone the discriminatory process sets is a negative one towards civil rights; that in fact, a selection process which brings into the police a representative group of the community is an important part of the working environment of a police department, which eventually influences officers' behavior. So it goes without saying, that obviously a selection process should not in and of itself be discriminatory, but that the people it chooses also not be discriminatory.

Let me move on to the training and talk about what I view as sort of a limited role that training can play, and then point out some problems I now see in training. Obviously, the purpose of training is to apprise officers of what is expected of them, to make them aware of the law, make them aware of the policies of the department, the procedures of that department, to in effect outline for them what is expected in their daily conduct.

Unfortunately, we have many problems in transmitting this information to our officers. First, we find that much of the training that goes on now is not related to the everyday work of the officer. The training may be presented in very legalistic or very simplistic ways and is not useful to the officer when he reaches the street. We often hear that the recruit gets out in the field and meets his first officer and is told to forget everything he has learned. In the street, it is very often true, because the training itself is not related to what he encounters.

In Boston, we had an experience where we worked with the Boston University School of Law to try to develop procedures for our detectives in the area of the fourth amendment. We found in preliminary work with these officers that, in testing them on their views of what

they could and couldn't do, we had an equal number of officers who abused the law, who went beyond the law, as we did the number of officers who felt that the law was much more restrictive than it actually was; that, in effect, they hadn't really understood what was expected of them under the fourth amendment. We worked with them; we developed procedures with them together; we tried to train them in a way that was related to their work experience, not as related to lawyer's work, but related to a police officer's work. In that context, those rules became more meaningful.

So I urge that the training we do develop be viewed from the context of a police officer. Oftentimes, the training we have nowadays is not updated; it's out of date. That was the case in Boston, that since the last time they received any training, the laws had changed, procedures had changed, the expectations of the community had changed. All these need to be updated constantly

Finally, again I point out that I only highlighted some of the problems; there are many more. I did not have time to go into detail with many of them. But the final problem is that there is not enough training in policing in the area of management. I know we are going to talk a little later about that, but that, to me, is the most important focus: management. But we have no training in the area of management. We train the officers when they come in and even in more enlightened departments continue to train them during the time they are in service. But we give no supportive training in the management. That is the area where the rank and file should get cues, from management. We cannot ignore training of police management. As I said, I believe that the most powerful force for influencing police behavior in the area of civil rights is effective leadership, aggressive, committed, vigilant police leadership.

I believe that's important because a police leader sets the character of his department. As in any paramilitary organization, what the leader does flows all the way down through the organization, so that the character and the tone that that leader sets has an influence on the behavior of the officer. The leadership of the organization provides what I believe is most important in the control of police behavior, and that is the following. You can have many procedures, you can put out many policies about what your officers want to do, but they look at only one thing: what are your actions? How do you follow up those policies? You can write all the nice policies, you can have all the nice training, and you can do all the right things; but if you don't aggressively follow it up with leadership and with commitment to back up what you put down in your policies, the police officers will ignore them and do whatever they like.

Another important aspect of police executive leadership is the influence it plays on the middle manager. As I said, the cues to the police officers often come from the middle management, the supervisor, the lieutenant. Those officers, in turn, look up to the organization for

their cues. Again, this falls on the police leader, to influence middle management to support what he believes the police officers should be doing out in the street. His commitment to the observance of the civil rights, his constant vigilance that these are being carried out, should be imparted to middle management. If it isn't, it has no meaning to the officer on the street. Finally, and the obvious, the administrator must, of course, set clear policy, that he gives guidance to the officers in middle management of the department as to what he expects.

Well, if I place this importance on police leadership, what does the current picture look like? I'm afraid it doesn't look too good. If I could label the most important problem we now have facing police leadership, it is the lack of tenure. Without police tenure for the leaders, it is very difficult for the police leadership to take an aggressive posture because he is constantly worried about the one issue: survival. It is hard to take an aggressive posture against his officers; it is hard to take an aggressive posture with the community, as often needs to be done in the area of civil rights. Therefore, the issue of tenure must be addressed.

Another thing I see on the horizon, which does not paint a good picture for police leadership, is the whole Proposition 13 fever. Obviously, that's going to have an impact on recruitment. There will be less recruitment. That means less new and young blood in the police department. That means less recruit training to influence those people. It means less training because of less funds on the officers of the rank and file. It means less experimentation in finding the answers to how it can better influence officers to keep their practices within the law.

It also means, in what we have seen currently, more efforts to appease the unions because there would be less money available to give them the wage increases they demand. There will be more concern on the part of the municipal leaders to keep the unions quiet. Aggressive leadership, vigilant leadership often creates controversy, and that controversy is something that municipal officers don't want at this point in time.

I sense sometimes across the Nation that we are now moving into police leadership by popularity, that the major criterion for keeping a chief is, does he keep the men happy? Are they satisfied with him? This does not lend itself to the aggressive leadership I believe is necessary to make serious inroads in this area.

Finally, Proposition 13 has focused or forced leadership to focus on tangible, cost-cutting measures that become a major criterion to success, that the focus on how officers act on the street becomes secondary to their concern for efficiency and cost effectiveness.

I don't mean to paint as bleak a picture as that, because there are some encouraging signs. There are some leaders, and there are more and more each day, that are concerned with this area and realize the tremendous impact it has on the ability of the police department to serve the community and its ability to function in that community. So,

while I focus on the negative, I believe that there is some hope for the positive.

Thank you.

COMMISSIONER FREEMAN. Thank you, Mr. Hayes.

Mr. George H. Datesman, Jr. Mr. Datesman is a research associate in criminal justice in the Department of Human Resources at East Central University in Ada, Oklahoma. Until December 1, he was Deputy Director and Chief of Planning and Analysis of the Office of Criminal Justice Education and Training, LEAA. He was formerly a planning and evaluation specialist for LEAA in Atlanta and special agent in charge of the Office of Research and Development for the Florida Department of Law Enforcement.

Mr. Datesman holds a B.S. and M.S. in criminology and is a doctoral candidate at George Washington University. He has authored, co-authored, and directed the production of numerous governmental reports in the areas of criminal justice, human resources research, planning, and development.

Mr. Datesman.

STATEMENT OF GEORGE H. DATESMAN, RESEARCH ASSOCIATE IN CRIMINAL JUSTICE, EAST CENTRAL UNIVERSITY

MR. DATESMAN. Thank you, Commissioner Freeman.

In 1973 the Congress mandated the Law Enforcement Assistance Administration and the National Institute of Law Enforcement and Criminal Justice to conduct a nationwide survey of human resources in the criminal justice system. The basic idea behind that survey was an attempt to learn how many new people would be needed in the system and what the qualifications of those people should be, both currently and in the future.

In order to do this, the National Institute of Law Enforcement and Criminal Justice issued a multisided contract. Basically, the contract was under the auspices of the National Planning Association. They built a complex model, an econometrics-based model, which forecast the numbers. The numbers, for our purposes here today, are probably unimportant, and I will not relate them.

In addition, they used a variety of different techniques that are designed to develop an understanding of the qualitative aspects of the human resources necessary to operate in the justice system. The remarks that I am about to make are those which relate primarily to the law enforcement sector, and what they did, very simply, was to analyze the law enforcement organization in an attempt to develop an understanding of the goals and objectives of that organization or that system.

They followed that up with an analysis of the functions and the roles and the jobs, breaking the jobs down into various tasks associated with each job. Then, each task was analyzed in turn, the idea being to

develop some understanding of the kinds of knowledge and skills, abilities, and, yes, attitudes that would be required to perform the task and thereby the job. From this statement of knowledge, skills, and ability, the researchers attempted to develop some understanding of the appropriate educational levels, the appropriate kinds of training, selection criteria, and so forth that both entry-level, supervisory, and managerial law enforcement personnel should meet.

They then set about looking at the criminal justice system, looking at the personnel in the existing system of criminal justice and law enforcement, in an attempt to discern how close we currently were to meeting those goals. I would emphasize to you that this report has only recently reached the street. I would also emphasize that anything which I am about to tell you that may seem like an opinion that I have, first of all, I am going to try and be as empirical with you as I can be and simply give you the facts or the data from that survey. Secondly, in the event that I venture an opinion, I wish to emphasize that that is not to be considered an opinion of the Department of Justice or the Law Enforcement Assistance Administration, as I think we are all aware.

Let me read, if I may, because the time is short, some of the findings in relationship to law enforcement training and the law enforcement officers that receive that training, as of 1975 and 1976 in the United States.

> At that time there had been considerable growth in entry-level training over the past several years. Virtually all agencies in jurisdictions of 25,000 or more offer some entry-level training to their new entrants. In the most recent past, nearly 80 percent of those agencies surveyed indicated they had in fact increased the extent of that training. In 1975 approximately 90 percent of all new recruits entering the law enforcement service in the United States received at least some training. The agencies that did not provide entry-level training in 1975 were predominantly small and located in States that are heavily rural.
>
> Nearly 63 percent of all new entrants in 1975 received at least 400 hours of formal, entry-level training. The 37 percent that received less than 400 hours are concentrated in the smaller agencies.
>
> Despite this impressive growth in the duration and [illegible]f exposure to entry-level training, the field and job analyses co[illegible]ducted by the researcher served to indicate that serious deficien[illegible]es still exist in the area of entry-level training.
>
> First, most job tasks continue to be learned throu[illegible]h on-the-job experience rather than through formal training o[illegible] educational experience; and secondly, trained recruits are d[illegible]icient in several critical knowledge and skills areas. Existing def[illegible]iencies suggest a

need for structured field training and formal classroom training in topics relevant to the peacekeeping role. Although most agencies offer inservice training programs of some type, incumbents receive such training infrequently. Only 36 percent of all sworn personnel reported participating in an inservice training course, and less than 4 percent of those incumbents surveyed received any inservice training within the previous year.

The results of the field and job analyses support the assertion that formal supervisory training should be given to all newly appointed supervisors. Nearly 90 percent of chief executive officers surveyed agreed with those analytical findings. Yet, only 37 percent of agencies offered such training, and that training which was offered the newly appointed supervisor was simply not sufficiently effective.

Training for executives and midlevel managers is also very infrequent. Despite a consensus as to the critical nature of the need for such training, only 46 percent of all managers surveyed had received any kind of specialized inservice training, and that training which was provided, again, was judged not to be effective.

As a general statement of the existing conditions, it appears obvious that our training programs are deficient in terms of content, that insufficient numbers of personnel are exposed to these training programs, and that even those exposed to the training are still lacking essential job knowledge and skills. Most job knowledge and skills are still learned on the job through the informal process of experience. Approximately 10 percent of new recruits, 63 percent of newly appointed supervisors, and 54 percent of all managers received no formal training for their jobs, and these untrained personnel appear to be concentrated in smaller agencies serving the rural areas.

The analysis of the training programs and training academies resulted in similar findings. Agency-affiliated academies are the single largest source of entry-level training for law enforcement officers. The agencies which operate these academies account for 57 percent of law enforcement employment. About 75 percent of all agencies with 500 or more employees do operate their own training academy. Smaller agencies rely mainly on State or regional academies and to a much lesser extent on other agencies or those affiliated with other educational institutions.

States can vary considerably in the number and types of academies utilized. The National Advisory Commission on Criminal Justice Standards and Goals recommended a standard for the length of entry-level training of 400 hours. Agency-affiliated academies averaged 494 hours, regional and State academies averaged 382 hours, and academically affiliated academies averaged 290 hours.

In the agency-affiliated and academically affiliated academies, the length of training increases as the size of the group increases. Nearly the opposite pattern is true of State and regional academies. Curriculum content in nearly all the academies places the most emphasis upon operational subjects, at the expense of human affairs topics. Nearly 90 percent of the academies surveyed offered at least one inservice course. Only 21 percent of the academy instructors had full-time appointments, with academically affiliated academies using part-time instructors almost exclusively. Nearly 80 percent of law enforcement academies require some instructor training, but little of this training relates to human affairs concepts. Only 35 percent of the academies surveyed offer any field training. Only 50 percent of the academies surveyed meet the desired standard of 25 trainees per class, with State and regional academies being most likely to have classes of 50 or more students per instructor. Nearly 93 percent of the academies surveyed continue to use the lecture method of instruction, despite rapid development in more functional instructional technology.

Only 20 percent of the academies surveyed reported using performance testing in some areas. Despite the high rate of juvenile crime and contact with juvenile offenders, little coursework is provided in this area of concern. Curriculum variations and duration and content are suggestive of problems in conceptualization of the job [as we have already been told], as well as difficulties in determination of performance problems and the appropriate type of response to such problems.

In closing, let me simply say that we are faced with a situation in which we continue to have approximately 10 percent of the police officers in this country that go out on the beat every day that receive absolutely no training. We are faced with situations where over half of the chiefs of police and half of the supervisors in this country are not in fact being trained to do their job.

Federal expenditures to assist State and local units of government exceeded $225 million directly on the education and training of law enforcement and criminal justice personnel in 1975. The national manpower survey reveals quite clearly that this is an insufficient amount of support. There are major areas in the country today in which police officers are just totally and completely untrained. What is worse is that those who are trained, the training appears to be deficient, particularly in the area of concern to this Commission, which is the area of human affairs.

Thank you.

COMMISSIONER FREEMAN. Thank you, Mr. Datesman.

I said at the outset that Dean Myren and Dr. Takagi will sit on this panel as discussants, and from this time and for the next several minutes, we will have the discussion among the panelists reacting to either one or more of the presentations. Dean Myren?

DEAN MYREN. I find very little to argue with in the comments of my colleagues. I do think it can afford to be stressed again that, from all the research that I have seen and reading in doctoral dissertations and the rest of the literature, the environment in which the police officer works is a determinant of his role. And until that environment can be changed, the street environment in which he works, the departmental environment in which he works can be changed, the community environment in which he works can be changed, we are not going to see a great deal of change in the attitudes of the police officers toward the civil rights of their fellow citizens.

DR. TAKAGI. I'm not terribly surprised about the reports given. In fact, within a closely related area of criminal justice, for example, in corrections, a great deal of money has also been expended in that effort in terms of reformation, deterrence, etc., and the results are pretty much typical. It doesn't matter what we do or the amount of money we spend, the problem continues to persist and it continues to plague us.

I think I quite agree with what Mr. Hayes and others made implicit in their comments, that training or further education is not going to make a heck of a lot of difference. Mr. Hayes focused upon having good, aggressive police leadership. I know personally some of these police chiefs across the country who have a good sense of—well, let me use the words—politically aggressive chiefs of police, and they tell me that, with respect to police using force, he knows the kind of officer who is going to eventually kill. He's the guy who plays around with his guns, he keeps them polished up. If he has his druthers, he'd fire them on the job, because it's going to happen sooner or later. But he can't, because of the police unionization movement, because of the civil service structure and all the kinds of rights that the individual police officers have today.

Recently in Seattle, Washington, the city council adopted a tighter gun policy, that firearms can only be used when the situation is of immediate danger to the police officer or to someone else. Now, the police association—in this case they were called the Police Guild—was able to circulate a petition and received sufficient signatures that went on a ballot so that the police officer can—I think they expanded the original city council resolution so that they can also shoot at fleeing felons as well.

But this gives you a very good idea of how powerful the police union movement is today. In a sense, it has a life of its own now, and I seriously doubt that any kinds of aggressive police leadership or education or training or amount of money is going to make any difference from here on in. Because, as I indicated in my presentation, the fundamental problem is within the larger structure; and the police role is, of course, to maintain order, and the purpose of that order is, like I said, or as Professor Bell said, lies within the structure of capitalism.

I think it's a very, very grim picture, and although I support the kinds of things that the earlier panelists talked about—that is, more aggressive action on the part of the U.S. Attorney General, prosecution and weeding out of essentially violent policemen. I support all of these kinds of programs because it's absolutely essential that we try to make as much progress as we can at this point in time. But I think we should all recognize that over the long haul to reform the police system is a contradiction, because all one has to do is study the history of policing in this country; and we need to remember that the original metropolitan police that was created in Boston, Massachusetts, was *not* to fight crime, it was designed to suppress those crazy Irish immigrants who came to this country believing that we really lived in a society that cherished liberty and freedom and justice.

COMMISSIONER FREEMAN. Anybody else?

COMMISSIONER SALTZMAN. I'm not sure that I am hearing the same thing from all of the panelists with respect to training. Is it that all of you agree that training is fruitless and irrelevant, or is it on the part of some that training may be inadequate, poorly conceived or implemented, but ideally can be effective in ameliorating the situation? What does everyone think? Does everyone agree with Dr. Takagi that training is fruitless and irrelevant or poorly conceived and poorly implemented, but hopefully, improved upon can improve the situation?

DR. EISENBERG. I would like to take a crack at that. And the other panelists can take a crack at it too.

I do disagree with Dr. Takagi, although I respect his posture and position. I think the training can make a difference. I think it will go so far because there are limitations. There is a level at which improvement can't be made and other things become more important to them so that those things that Dr. Takagi was talking about and Gary Hayes was talking about in terms of imaginative forceful leadership.

But I think very much so that at the recruit training as well as supervisory command and executive levels that police training can make a difference in terms of performance, in terms of service, and in terms of civil rights.

MR. HAYES. I would like to respond to that too, since I raised that point. I think it depends on the role that you are looking at. If you are looking at training to change people's behavior, then I basically think it is somewhat fruitless. If you look at training as I do, as a purpose to inform, that is highly irresponsible of management to expect officers to act correctly if they never inform them how they are to act. That is the purpose of training, a way to pass on the policy, a way to pass on the law, a way to pass on the spirit that the chief embodies; and if that is the purpose of training and it can do that in an imaginative way, then it is useful. But to expect training, as I have often heard people saying, or selection, to be the panacea for the end of abuses and changing people's behavior, then I would say it is fairly fruitless.

MR. DATESMAN. I would like to attempt to answer that, too. I think that I agree with everyone, but in some cases, I don't agree.

First of all, I think that for the purposes of this Commission and the purposes of this panel, I really think we are faced with a problem that has several levels to it. First of all, we have to face the issue that we have taken it upon ourselves, in reform, to reform basically through people-changing strategies, and when we implement people-changing strategies, historically, what we have done is include more and/or different types of education and training and different selection mechanisms.

We either want to change the people who are already there or we want to bring in new and different people, and that is certainly one of the strategies, and it's a strategy that the government has used historically for trying to change the performance or change what an organization does. We have indicated today—and I hope I indicated today—that there are certain problems with that strategy. The training programs which we have implemented have not been fully implemented, and even there, there are some significant problems.

But in addition to that, I think this Commission must keep in mind the fact that, without regard to how successful we may be with our people-changing strategies through our training of recruits and the education that they receive prior to the time they come on board, or even after they have come on board, the fact simply exists that there is a pervasive influence in the existing organization complex which both the gentlemen who talked about the role of law enforcement touched on.

In addition, I would ask the Commission to keep in mind that there is reason to suspect and believe that that pervasive influence of the existing organizational complex with the prevailing occupational role exists in response to a need or a demand, whether real or perceived, within the community that is being served.

Thank you.

MR. MYREN. I would like to add, also, I think at times the people that society delegates the use of force to, whether police or the military, are frequently put into situations they don't understand and where they are simply scared to death. Training can help there. It can go part way to meet that kind of situation. I think, for example, when you put raw, young military draftees into the city of Detroit in a kind of tense situation with no training at all in riot control or anything like that, you can't expect anything but for them to shoot people, and the same happens with police officers.

Training can teach the officer how to handle his weapon, how to become confident in his own ability to use it, and I think one of the end results of that kind of training would be to make him wait longer before he resorts to using it, to make him more confident that he can handle the situation without the use of fatal force. That's just one example of ways in which training can help.

However, it can't do the attitude-changing job, which I think is probably basically the more important.

COMMISSIONER FREEMAN. Mr. Nunez.

MR. NUNEZ. I would like to address this question to all of the panelists, if I may. I heard the phrase "pervasive attitude," a fortress mentality, an attitude that police have, and I want you to address the issue of how the police, the average patrolman, views the general public and is that a problem?

DR. PEIRSON. I would like to respond to that. I think it can be done on a current level. A community nearby just lost its police chief because one point he made was that the police generally view the community as the enemy. This is not the first time that's been said. It's been said by some very well-recognized writers, but the police got so upset about that comment coming from their police chief, that they were able, among other groups, to generate enough pressure to get that man removed from his job. But it still is basically true that the police view the community as the enemy.

COMMISSIONER FREEMAN. Any other comments to that?

COMMISSIONER RUIZ. If the police regard the community as the enemy, how does that reconcile with Dean Myren's observation that it's the community that influences the conduct of the police? He is talking about the community at large, not the minority of the community.

DR. PEIRSON. I think that's where we would differ. The minority community has very little input.

COMMISSIONER RUIZ. Yes, I'm aware of that.

DR. PEIRSON. The community at large, I think, means the business interests. They do have influence over the community.

COMMISSIONER RUIZ. Do the police regard the segment of the community business interests as the enemy, or do they regard the minority in the community as the enemy?

DR. PEIRSON. I think you would even have to separate out the business community from the other community at large. The business interest, political interests have a great deal of clout in the police posture; that other larger community and the minority community have very little input into what the police will do.

COMMISSIONER RUIZ. Then it is the power structure that is not the enemy, as I gather, what I'm trying to find out?

DR. PEIRSON. Yes.

COMMISSIONER RUIZ. And outside of the power structure, that is the enemy?

DR. PEIRSON. That is the enemy.

MR. HAYES. I would like to add a little different view about the police viewing the community as the enemy. Skolnick's book, *Justice Without Trial*, I think, adds some useful insight into this. The view of the community is not an enemy, but you place yourself in the role of a police officer, every person is a potential problem for him, or a potential, I don't want to say "enemy," but trouble he has to deal with, a person. So that develops a certain outlook, not one in which everybody is viewed as an enemy, but in a context, potentially, people

could all be problems to them on an individual basis. Anyone walking along the street could turn out to be a robber or some other problem they have to deal with.

That adds a certain perspective on the part of a police officer. I think it's an overstatement somewhat to say that he views everyone as the enemy. Obviously, a child on a bike who is 12 years old is not viewed as an enemy. There are certain situations that—

COMMISSIONER RUIZ. Or a little old lady with white tennis shoes.

MR. HAYES. Yes. Exactly. It's a situational context, that when an officer is placed in a situation where he has to be apprehensive, that anybody could be a potential problem for him. That is different than when you and I walk along the street and look at people. That has an influence on the way they view the community. And unfortunately, it sometimes goes too far with some officers and they do extend that perspective to everyone. Others can keep it more in the proper perspective.

But another issue that we touched on, and it was almost ironical, and I didn't say anything at first blush, but we talked about the civil rights and we are obviously concerned about the civil rights of all citizens, and we talked about one police chief who was fired for speaking his viewpoint. I find it interesting and almost ironical that across the country you don't have that many chiefs who speak out their opinion, their viewpoints, for fear that if they do exercise their civil rights, they may get in trouble. And it goes back to the issue I brought up about tenure and their concern for survival. Many chiefs are fearful to speak out what they believe for fear there would be reprisals against them, namely, their job. It's ironical that we ask them to uphold the civil rights of the citizens, but oftentimes they don't have the same civil rights themselves.

COMMISSIONER FREEMAN. Chairman Flemming.

CHAIRMAN FLEMMING. In the part of the discussion that revolved around the role of the citizen, the impact of the citizen on the role of the police department, in our communities, sometimes citizen organizations and coalitions of citizen organizations feel that they have a problem in relation to the city council, and they organize for the purpose of trying to establish relationships with that city council, trying to bring pressure to bear on the city council in order to get the city council to move in a certain direction.

Do we have any illustrations in the country of organizations of citizens, coalitions of organizations, including minority organizations, getting together for the purpose of developing a continuing relationship with the police department? Not a relationship that grows out of a particular incident that everybody gets stirred up about, but a day-by-day relationship with the police department in an effort to influence that department so that the department has a better understanding of what various elements in the community expect; also, in an effort for the citizen organizations and the coalition of citizen organizations to

develop a better understanding of the department and what the department's objectives are. Have we got illustrations of efforts along that line and have some of them been successful or not?

MR. MYREN. I think very clearly—and the others who are more expert and more up to date on this can deny or add—I think very clearly there have been a number of attempts. We have right here in Washington the neighborhood groups that are organized who maintain those kinds of relationships. There was a man by the name of Andreotti in San Francisco who did a job there which, from the literature, one must assume was an extremely effective one, in bringing the two groups closer together and developing understanding. He didn't last. He was forced out because of the fact that what he was trying to do was contrary to the culture of the department at that time.

So there have been attempts. Some have been successful, and some have been completely unsuccessful; some of them turn out to be pure public relations operations—snow jobs—in which the department tried to convince the community that it's doing everything right, as opposed to real community relationship operations. There have been successes; there have been failures. I do think, as someone pointed out earlier, that the funding for these attempts has decreased appreciably.

CHAIRMAN FLEMMING. But can you think of one or more than one that has been going on over a period of years that is still going on that has had an influence and is still having an influence on the evolution of policy within the police department?

MR. MYREN. Well, I have been fairly much out of touch in becoming an academic administrator, and I'm sure there are others here, if not on this panel, of those who will be here this afternoon, who are more up to date on that than I am.

CHAIRMAN FLEMMING: Dr. Takagi, do you know of any?

DR. TAKAGI. Well, I think in a small white rural town, they have a nice relationship with the cops. They work together; they were working together well for the last 100 years, 200 years. In this community, the posture is antiblack, why you can see that in a cop's operation, also in a white community. I think that today within the area that I live in, southern Alameda County, the pickup driver with the gun rack, they get along fine with the cops. And that's the way it's been.

CHAIRMAN FLEMMING. That's not what I mean.

DR. TAKAGI. I know that's not what you mean.

CHAIRMAN FLEMMING. That's not what I'm after. I'm trying to find out whether in any community in this country, let's say over a reasonable span of time, organizations of citizens, the coalition of organizations of citizens, have said on a week-in, week-out, month-in, month-out basis, "We are going to attempt to have impact on the evolution of policy as far as the police department is concerned"? Obviously, I'm thinking of organizations of members of the minority communities, as well as the business organizations which have been referred to as having an impact from time to time on the evolution of police policy. But

I am trying to see whether or not anything has been tried comparable to the kind of activity that does go on in a community in an effort to influence the evolution of policy within the city council. Now, is anything like that going on or has been going on with a city in relation to the police department?

MR. MYREN. My impression is that it comes and goes. One of the reasons, that Gary Hayes points out, is that there is a very short tenure among the leaders in police agencies. And secondly, I think that one of the problems is there also is a short tenure among the leaders in the activists' groups. These groups are not well organized, generally. When they do get well organized, it's usually because some funds have become available, and when that fund source dries up, they just wither on the vine. So my guess is they just come and go.

DR. PEIRSON. My experience has been that community input has been tried and is still being tried in many communities, and also, my experience is that it doesn't work.

CHAIRMAN FLEMMING. Do you see any way or can you think of anything that can be done to help make it work?

DR. PEIRSON. As long as the police are as autonomous as they are during our present period, I don't see any way it's going to work. Their ability to decide for themselves the type of law enforcement, where it's going to be imposed, is almost without parallel. As long as that condition exists, the community is not going to have any real input into the police.

CHAIRMAN FLEMMING. In other words, and let's take a hypothetical situation where we have got a very effective coalition of organizations of citizens that does represent the community as a whole and all various segments of the community, in your judgment, it would be very difficult, if not impossible, for them to really have an impact on the evolution of police policy?

DR. PEIRSON. That's right. They might have a short-term impact; for public relations purposes the police will adopt something. If the community says that there is too much criminal activity, too much prostitution, there will be a crackdown for maybe a month.

CHAIRMAN FLEMMING. Anybody else want to comment on this?

DR. EISENBERG. This won't help the Commission any, but we are doing some research under a LEAA grant that has to do with police policies, and for the past 3 months we have been reviewing what can be done; and we really haven't found anything except what Richard has been talking about, the short-term incidents that pertain to a particular incident which generates some community involvement and community participation and so on. Other than that, we really haven't found anything that speaks to the consortium or collaborative effort you are referring to.

COMMISSIONER FREEMAN. I believe we have time for one final question. Dean Myren, did you have a further comment?

MR. MYREN. No.

COMMISSIONER FREEMAN. Is there anybody who wants to make a final wrap-up comment before we have the luncheon recess?

COMMISSIONER SALTZMAN. If there is no further comment, I would like to just have clarified by Dean Myren, when you recommended the abandonment of the quasi-military character of the police department, specifically what were you referring to?

MR. MYREN. That's really a minor point in the overall change that I see is needed.

COMMISSIONER SALTZMAN. Would you list the overall changes that you see?

MR. MYREN. My views have been completely rejected by the entire academic and police community that deals with criminal justice matters in this regard. I believe the governments, city governments, ought to shape up and reduce the responsibilities of the police, which will make those agencies smaller and more manageable. I think you ought to take away the temptations for corruption that comes out of enforcement of convenience and put it in other agencies. The police department that I would see would be a much smaller one with a much more limited jurisdiction.

MR. HAYES. If I could just add one comment, another current that runs throughout everything we have talked about that became crystallized with your question, Mr. Chairman, as to why we don't have sustained coalitions trying to impact the police departments—it is my belief that part of the problem is because the public does not appreciate that that can be done. To give one example, I don't believe that the public seriously understands the repercussions of the quick dismissal of a police chief because he alienates himself from his police officers. They have absolutely no understanding of what impact that has on the coalitions in general. That is one example of numerous issues.

DR. TAKAGI. Dean Myren talked about only 10 percent of the police in activities in crime investigation, and I think it's a very important point, because there is a widely held belief that the police are organized for crime control. With the enormous increase in crime in the last 10 years, and of course, the public feels that the growth of the police apparatus, that we shouldn't tamper with it and should support it. The important connection we have to make here is the police are really not there for purposes of crime control, for crime prevention, and that's the contradiction.

COMMISSIONER FREEMAN. I think this has been a very interesting discussion. Certainly, the presentations which have been made this morning would demonstrate that we are tackling a subject that is very complex.

I want to say to Mr. Hayes, however, when he challenges this Commission to "make them understand," that we don't believe we have that capability, but we will certainly do our best in our clearinghouse responsibilities.

Now we will be in recess until 2 p.m.

Afternoon Session, December 12, 1978

CHAIRMAN FLEMMING. I will ask the consultation to come to order.

I am requesting my colleague, Commissioner Ruiz, to serve as chairman during the period that we listen to the next panel. He will introduce the panelists and start the discussion during the period we have set aside for this panel. Commissioner Ruiz.

REGULATING POLICE PRACTICES

COMMISSIONER RUIZ. Thank you, Mr. Chairman.

This morning our consultation was on the police role, how it is perceived by the public and by the police themselves. This afternoon the initial phase subject matter concerns regulating police practices.

The first panelist I will call upon will be Kenneth Culp Davis. Professor Davis is currently on the faculty of the University of San Diego School of Law. He is also a John P. Wilson Professor Emeritus at the University of Chicago School of Law. Professor Davis has written extensively in the area of administrative law, with one prominent Federal judge describing him both as architect and builder of this rapidly developing field.

The author of a four-volume administrative law treatise, Professor Davis has pioneered the way in extending administrative law principles to the area of police discretion. In this regard, he has written *Discretionary Justice and Police Discretion*, in addition to several articles and lectures on the subject.

Professor Davis also chairs the American Bar Association's section on administrative law. He received his law degree from Harvard. Professor Davis.

STATEMENT OF KENNETH CULP DAVIS, UNIVERSITY OF SAN DIEGO SCHOOL OF LAW

MR. DAVIS. Thank you, Mr. Chairman.

I think I should emphasize after that introduction that I am not a specialist about the police. I have been trying to study discretion in

government agencies in general and that has included the police, and I have a little book, a rather puny one, which is entitled *Police Discretion* that was prepared on the basis of interviews of the Chicago police during the summer of 1974. I had five law students between their second and third years who worked full time interviewing about 300 officers of the Chicago police at all levels. What I know about the police is based on that interviewing and on very little more. Whether or not what we found in the Chicago police is representative of police in large cities of the country, I do not know, but I have impressions that it may be.

My main point links up with the discussion that I heard this morning when there was inquiry whether there could be community pressure that would get response from the police. My main point is: policy is made primarily at the bottom of the organization, not at the top. Now, that's a rather surprising fact. I know of no other organization, governmental or nongovernmental, in which policy is made primarily at the bottom.

Let me give examples. A 19-year-old standing in the street fired three shots at a woman standing in a doorway. All three shots missed. Neighbors witnessed the second and third shots. The police apprehended the young man. The woman requested that they let him go. They did let him go. I was startled at those facts and suggested to my research assistants, "Let's find out what the general policy is," and we interviewed on that question. The question was: if the victim of the crime refuses to sign a complaint, is an arrest still made or is the offender released? What we found was, with our sampling at the patrolman level, nearly all patrolmen agreed if the victim does not sign a complaint, you have to let the person go. At the sergeant level, it was a little different. There were a few more that would make the arrest. At the top level, the superintendent and the five deputy superintendents, the division on the question was four to two in favor of making the arrest.

After it was pointed out to the top six officers that most of the patrolmen or nearly all of the patrolmen would not make the arrest, they did nothing about it. They were rather amused about the fact that they were divided, and their view was one way and the view of the men was the other way.

One patrolman answered our question by saying, "Why, I was standing in a dark doorway, and I witnessed an armed robbery. I stepped out and I got the robber all right. The victim asked me to release him, and, of course, I had to." Now, that's a sample of the way the law is enforced in Chicago.

Who makes the policy?—who makes the policy that is of main concern to the Civil Rights Commission? I would say the policy is made almost entirely at the bottom level. A part of the terms on which I could make my study of the Chicago police was that I could not inquire into corruption, brutality, or racial discrimination. I inquired

into selective enforcement, which inevitably got over into the area to some extent of discrimination of all kinds, including racial.

My research assistants would come back with stories. "Do you know that there are two kinds of people? We just learned this from the people we've been interviewing," they would tell me. "There are the kinky ones and then the law-abiding people." I hadn't heard the work kinky. I had to have that explained to me, what that meant. You can tell a kinky person by his appearance usually, by his dress, by the way he wears his hair. If you can't do it that way, you look him in the eye and you can tell.

The answer to the question of what the policy is, about arresting or not, depends upon which of these two kinds of people you're dealing with. The policy is made by the officers on the basis of ignorance, on the basis of their own backgrounds. They have a group spirit about this. The top people, when I would ask them about this, wouldn't even know about what the men are doing in this respect, and they didn't care.

The subject that I've focused on in this little research project was selective enforcement. Of course, we all know that some law is enforced. Some is not enforced. Some is enforced if, as, and when the particular officer wants to enforce it. In general, on the subject of selective enforcement, there is virtually no guidance from the top. There are general orders and there are special orders, but the general order on the subject says in very plain, clear, and unambiguous language that all law must be enforced; and if the officer fails to enforce for a crime committed in his presence, if he fails to make an arrest that he can make, he is guilty of a misdemeanor under the Illinois statute. Then the Police Board of Chicago has a regulation which supposedly governs the police, and it says in absolute terms that every arrest must be made. Of course, we have whole big areas of nonenforcement. I won't go into those. I think everybody is aware of what happens.

I think I can summarize this way, that there are five major deficiencies in the manner in which selective enforcement policy is made. First, the top officers fail to make most of the policy, so that patrolmen become the prime makers of the policy. Secondly, no one in the department makes special studies for the purpose of formulating policy. The policy choices are based on nothing better than the patrolmen's offhand judgments. Three, the department does not employ professional staffs who have the requisite training in various fields. The department does not even have a staff of legal advisors. Four, the department has no administrative procedure for ascertaining preferences of the community about enforcement policy or for allowing members of the public to know and to criticize the department's enforcement policy. Five, the department makes no effort to coordinate its enforcement policy with the policy of prosecutors and of judges, and some of its enforcement policy is based on misimpressions of the policy of

prosecutors and judges. An example of the misimpression is what I spoke about the 19-year-old firing the three shots.

The usual reason that patrolmen give for not making the arrest is, "You can't get a conviction if the victim will not testify willingly against the offender." Well, I thought I knew that wasn't so, but I had my boys check with the State's attorney's office to see what they would say, and they all said, "Well, if you have a witness to the crime, that surely does suffice. You can be pretty sure of getting a conviction whether or not the victim is there."

The patrolman can't go to someone and get legal advice. The top people supposedly can go to the corporation counsel for legal advice, and sometimes they do. I understand the New York department has a very large staff of legal advisors.

The deficiencies, it seems to me, stem from one fundamental. The police are required by statute to enforce all criminal law, all statutes and ordinances. The reality is that the resources are insufficient, and the practicality is that, of course, it is undesirable to have complete enforcement. What the police do is to cover up what they deem to be their failure.

The selective enforcement is the product of insufficient resources for full enforcement. It is a natural product of that fact, and legislation is contradictory. Legislation requires full enforcement. The legislatio provides appropriation for partial enforcement. The police believe that they are doing the wrong thing if they fail to make an arrest that can be made. So they tend to cover it up. They have a gigantic system of false pretense of full enforcement. When I asked the top officers, "Why don't you include in your general orders some provisions about nonenforcement?" the answer is unhesitating, "Because we are required to enforce everything. We can't tell our men not to enforce something."

Now, the system of false pretense results in the failure of the top people to give instructions about even priorities of enforcement. The false pretense seems to me exceedingly harmful, not merely because I prefer truth to falsity, but because so many harms flow from it. It prevents high officers from making the enforcement policy other than to say in an empty fashion that is disregarded that everything has to be enforced. It prevents studies by specialized staff. I think the false pretense should be replaced by an honest system of open selective enforcement which is honest in all respects, and immediately everyone will say to that, "Why, if the Illinois legislature makes this act a crime, the police cannot say through a formal regulation that is made known to the public that we will treat it as not a crime." But that's a legal question and I've studied it as a legal question and I am going to assert to you: I believe that it is legal and that any good court will hold it to be legal.

Now, I am perfectly aware of the fact that the statutes and the police regulations and the ordinances are unambiguous in saying that the

police have the obligation to enforce for every offense. There is no problem of interpretation of that, but that is only one voice of the legislative body, and the legislative body has spoken with three voices, which are conflicting.

The second voice is the voice that says almost every time a new criminal statute is enacted, when someone objects, "This goes too far and ought to be cut back," the answer invariably is, "The enforcement officers will take care of that. They will cut back; don't worry about that." The legislative intent is clear in many instances that full enforcement is not expected to cooperative arrangements in which the legislative arrangements make it a crime from here to here and the police make it a crime from here to here.

The third voice is the one that cannot be ignored. It is the one that speaks the loudest and with the greatest voice and it is the one that is controlling; that is, when the legislative body appropriates this many dollars for this many men, and everyone who is informed knows that that means something like a half of full enforcement or possibly up as high as two-thirds. Most people think it's in the area of a half. If there can be only one-half of full enforcement, then of course there will have to be some selectivity. That is compulsory.

It is not illegal for the police to have the number of dollars that are appropriated and to do as efficient a job as they are able to do in carrying out that policy. I think, with full analysis, I wouldn't be surprised if some lower court judges would hold that it is illegal, looking just to the one statute; but I think any good court that would go all the way into the problem would find that open selective enforcement is permissible.

Now, I think that selective enforcement should be mostly open. I won't go all the way and say that there is never a case in which there should be some use of a deterrent or some refraining from impairing possible deterrence and that some policies should be confidential. I think the problems about what enforcement policies should be confidential and which ones should be open are often exceedingly difficult questions. They have to be worked out one by one, but I can imagine a system in which the good procedures of the best Federal administrative agencies would be used for a police department. The best procedure for lawmaking by an agency is the new rulemaking procedure. The agency prepares a set of tentative rules and publishes them and invites legal comments from anyone who would like to submit written comments. Then the staff sifts the comments, and the agency is informed about what people want and is informed about the facts that come in. Then the rules are prepared on that basis.

I would say that the police can and should publish some selective enforcement policies. I can say the police can and should publish some rules in the nature of instructions to the men for public comment, and then it should prepare final rules on the basis of that kind of experience.

COMMISSIONER RUIZ. Professor Davis, you have 2 minutes.

MR. DAVIS. Two minutes. That's just right.

I think the police should voluntarily move to assist them in rulemaking, but if they don't, I think the courts can require them to. I have quite a collection of cases of judicially required, administrative rulemaking that can and will in turn be applied to the police.

What I want to say about the rules in my final 2 minutes is that I don't want rules on everything in the sense of governing rules. People often misunderstand the term "rules" in the administrative law sense. Rules may be guiding rules, or the term "guidelines" is a good one. But rules can be mixed. They can be governing to some extent and guiding to some extent. They can be educative rules that tell the officer what his problem is and what to consider in deciding.

The ultimate proposition is a rather simple one, and with these two sentences, I will conclude. A patrolman should not have discretion about overall enforcement policy, but he should have discretion to do the needed individualizing in applying the policy that his superiors have made. When discretion is needed for individualizing, rules should properly limit it and should guide it, but should not replace it.

COMMISSIONER RUIZ. Professor Davis, we are most appreciative to you giving us your conclusions of your particular research in the Chicago area. We thank you very much.

The next panelist is Amitai Schwartz. He is an attorney for the American Civil Liberties Union of Northern California. He is also the legal director of the Northern California Police Practices Project, a joint project of the ACLU Foundation, MALDEF, and the NAACP Legal Defense Fund.

Mr. Schwartz earned a law degree from Boalt Hall, University of California at Berkeley, in 1972. He has lectured on civil rights and police abuse before various professional and civil liberties organizations. Mr. Schwartz.

STATEMENT OF AMITAI SCHWARTZ, ATTORNEY, AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA

MR. SCHWARTZ. Thank you.

I would like to follow up somewhat on some of the comments that Professor Davis made. The project that you described in your introduction was a project that we set up in 1973 to try to attempt to remedy various sorts of police abuses that were occurring in the San Francisco Bay area in northern California. We had two primary aims in mind. One was to try to stop those or at least decrease the incidence of those sorts of abuses which were particularly troublesome to minority communities. The second effort that we made was an attempt to try Professor Davis' rulemaking principles as a means of controlling police discretion and thereby using it as a means to cut down on police abuses. We tried that for approximately 4 years, and that experience is what I would like to describe to you this afternoon.

The idea of using police-made rules as a means of controlling police discretion and thereby controlling abuses is not a new idea. It is relatively recent, but it is not new. In 1967 the National Crime Commission report suggested rulemaking. The Kerner Commission report suggested rulemaking. Professor Davis suggested rulemaking almost 10 years ago. There have been all sorts of academic law review articles on the subject. The LEAA funded a couple of model projects on development of rules, but on the other hand, very, very little has been done in the area. Some police departments from time to time have experimented in one fashion or another with rulemaking, but as a general matter, I think I can say from my own survey of the literature and my experience that very few of the local police departments in the United States today take the rulemaking process as a serious means of controlling some of the problems that they have in the communities that they serve in.

What we attempted to do was to put this in practice, and we did not concentrate on the area of selective enforcement that Professor Davis described. Instead, as a matter of priorities, we concentrated specifically on police behavior—that is, police tactics and police practices—trying to address certain of those tactics and practices that were amenable to a rulemaking process.

The mechanisms that we developed for rulemaking on a local level were primarily three. The first was a process of administrative rulemaking through a public hearing process. Our experience in San Francisco was about 4 years ago. We convinced the San Francisco Police Commission, which is the governing board of the police department in that city, to routinely hold public hearings whenever the department was considering adopting, repealing, or amending a written policy of the police department. What began as a practice in 1974 at our urging was later written into the city charter, which now requires that those hearings take place whenever the department goes about publicly making rules. Of course, one of the problems we've had ever since is a give and take over what is a rule and whether or not the department is making policy but that's inevitable. We did establish a framework for that.

The second means of trying to further this was through a negotiation process. What this meant was that our organization would represent individual community groups or coalitions of community groups to bring problems to the local police, whether it be the San Francisco police or some other police in northern California, in an attempt to work through a deliberative process, a process of give and take; that is, negotiate with the department, not as a matter of pinpointing blame or assigning fault for past experiences, but as a process of trying to deal with the future and trying to deal with prospective policies. And we developed a procedure where we would actually attempt to draft written rules and written policies which we would then present to the police, higher echelon police administrators, and then engage in a

process of reviewing those drafts and ultimately seeing that they were promulgated. On some occasions it worked and on some occasions it didn't work, but we were very pleased with the occasions where the negotiating process actually did work without necessitating any fact-finding, without necessitating a need for proof as to who was wrong and who was right, and without talking about the deeds of the past, but talking solely prospectively into the future.

The third area is in the legislative arena and through the judicial remedies, through the courts. Those two final mechanisms I don't place much faith in, in terms of a spurt to administrative rulemaking.

In the first place, the courts—although I have seen some of Professor Davis' work on the subject of court-ordered rulemaking—in the general sense, the courts can only order the making of a rule when the Constitution or some statute says that there has to be some law one way or another on the subject. As a general matter, the United States Constitution and most State constitutions are pretty general and very rudimentary in terms of police behavior. They just don't tell us much.

Secondly, legislatures, in terms of making substantive laws on police behavior, just don't do it because of the political pressures involved. So the courts are really limited to questions of excluding or admitting evidence in criminal cases or in taking on civil actions; that is, cases for money damages or for injunctions where there is some other substantive law which spells out what's right and what's wrong in the area of police behavior.

Our attempt was, on the other hand, to try and get the police to make their own rules on the assumption that, if they made the rules in consultation with community groups or in consultation with the public generally, they would be more prone to obey them because they made them than if they are enforced or prescribed to them solely by a court.

The benefits of rulemaking in terms of dealing with police abuses are several. First of all, at least in theory and often in practice, to assure some consistency once there is a rule or a policy or a guideline established in treating like cases alike. Second, it allows the police department to fill in some of the gaps in terms of what correct policy ought to be, in terms of the substantive policies. Third, it gives the police department an opportunity to accommodate competing public interests and not just to look to one set of the public or another, but to accommodate those interests in written policy. Fourth, it promotes efficiency because it gives the police some standard operating procedures. It improves communication because it allows the public to address serious concerns in a deliberative and calm manner without waiting for an ugly sort of incident to trigger a public response. It allows the police to really measure the public feeling and the public views. Finally, it takes away the necessity of proving wrongdoing or assigning fault.

Of course, there are some limitations. (I'm running out of time.) One of the major limitations is in those cities and counties where you have an entrenched political structure that is not going to change through a process such as this. But in many of the smaller areas that we've dealt with, and I think this would apply all over the country, many of the moderate police administrators are open to this.

The key to success under a rulemaking process is to identify the problems that you want to address. If the problem is merely identified as police brutality or harassment, it's very, very difficult to make a rule that's going to control the problem, because a rule that just says "brutality will not be tolerated" is not going to have much operational meaning. What is important is breaking down the subject of brutality, figuring out how it happens, when it happens, who's doing it, who the victims are, what times of night, day, locations of the city, and whatnot, and then begin to develop rules which deal with those individualized situations that lead the community to perceive a brutality problem or a harassment problem.

Thank you.

COMMISSIONER RUIZ. Your statement constituted an extension of the introductory remarks of Mr. Davis. We appreciate the giving of your valuable time to come over here and throw some light on this very complicated subject.

We will next hear from panelist Patrick Murphy. Patrick Murphy currently serves as the president of the Police Foundation, a privately funded, independent, nonprofit organization established by the Ford Foundation in 1970 and dedicated to supporting innovation and improvement in policing.

From 1970 through 1973, Mr. Murphy was Commissioner of Police for New York City after having previously served as Commissioner of Police for Detroit and Director of Public Safety in Washington, D.C. He was also appointed by President Johnson as the first Administrator of the Law Enforcement Assistance Administration. Mr. Patrick Murphy.

STATEMENT OF PATRICK MURPHY, PRESIDENT, POLICE FOUNDATION

MR. MURPHY. Thank you, Mr. Chairman.

The police, in performing their important work in prevention and control of crime, maintaining order, and providing services, confront all of the complexities of human behavior. It is necessary that they have great power, including the power to use force and broad discretion. Individual officers and pairs of officers operate most of the time without the benefit of direct supervision. As a result, difficult problems of organization and management are faced by police administrators in regulating police practices.

Laws regulating police practices vary from State to State, and local laws vary within States. Beyond laws and ordinances, individual police

departments develop their own rules, regulations, and guidelines. The interpretation and implementation of these rules and guidelines are often controversial and difficult.

In 1967 the President's Commission on Law Enforcement and Administration of Justice called on the Nation's police departments to "develop and enunciate policies that give police personnel specific guidance for the common situations requiring the exercise of police discretion." The call was later echoed by the National Advisory Commission on Civil Disorders and by the National Advisory Commission on Criminal Justice Standards and Goals. The American Bar Association's standards relating to the urban police function urged police administrators to "give the highest priority to the formulation of administrative rules governing the exercise of discretion."

While a number of police departments have made significant progress in the articulation and implementation of policies and rules, many police agencies still keep major policies ambiguous and invisible rather than risk discussion and controversy by developing overt administrative guidelines. It is, of course, not a problem unique to police agencies, since few of the other components of the criminal justice community give written guidance to their personnel in the exercise of discretion.

In 1972 the project on law enforcement policies and rulemaking was established at the College of Law, Arizona State University, with a grant from the Police Foundation. Its purpose has been to assist law enforcement agencies in developing workable rules to govern their own conduct. The project has prepared a number of model rules for law enforcement. They consist of the following volumes: eyewitness identification; search warrant execution; stop and frisk; searches, seizures, and inventories of motor vehicles; release of arrest and conviction records; warrantless searches of persons and places.

Model rules, of course, are no substitute for the local policy formulation and rulemaking which each law enforcement agency should do to guide and regulate the activities of its personnel. Court decisions and statutes differ widely throughout the country. Today's police department rulemaking may be rendered inapplicable by tomorrow's court opinion. Nonetheless, the models can serve as a guide to local rulemaking efforts, and it is with that hope that this series is published. Within the past year, the Police Foundation has also issued a publication entitled *Police Use of Deadly Force*, which is the result of work with seven police departments, analyzing their experience in the use of deadly force.

Police claim to often be in the middle of controversy and they are. They deal with violence; they deal with a great deal of stranger crime, as well as crime within families and among friends. The police do face danger, and when called upon to make the decision to arrest or use force, even lethal force, often it is a split-second decision.

The police are not monolithic. They are very much fragmented in the United States into more than 17,000 police departments. There are great varieties in their behavior and practices. Regrettably, we do not have standards established for the police at the State level; and the States, in my opinion, do not exercise a large enough role in establishing the standards for the police and coordinating our police network. Neither is the Federal role large enough, in my opinion; and the Law Enforcement Assistance Administration is only 10 years old and has provided a great deal of assistance to the police and can provide much more. I would hope to see a continuing and increased effort by the Federal Government.

Other actors in this problem are the police unions. There is always the issue of officer morale and the problem of community attitudes. Police practices should be more visible. We have a great need for more data about the practices of the police, which would provide the opportunity for comparative analysis and be useful to those who attempt to improve the way the police perform their important work.

The regulation of police practice depends upon good, strong organization and management. The following are among the most important principles of preventing improper practices and accomplishing productive results: first, adequate written reporting of all cases of use of force, arrest, detention, and interview and other serious actions by officers; second, supervisory responsibility for review, approval, and followup of the actions of officers, and this followup might include disciplinary action, training, counseling, and even separation of an officer from his police service; making enforcement decisions at the highest practical level when time permits, as well as establishing the priorities for enforcement.

It is true, of course, that the police administrator by the very way in which he assigns his personnel is establishing certain priorities. If half of his department is devoted to patrolling and 10 percent to detective, it obviously has an impact on enforcement. On the other hand, if only 35 percent are in patrol and 25 percent are in detective, it has another impact, and so it is with the number of officers assigned to traffic, youth work, organized crime, narcotics enforcement, and so forth. But within the individual units of a police department at the levels of supervision and management, priorities should be established so that officers are assigned and directed in such a way as to be most productive. This is, of course, a controversial question, as has already been pointed out; and on occasion, officers and their unions or associations challenge the exercise of management discretion in deciding what arrests will be made.

I would like to cite one more example about elevating the decision to take a particular action to the highest practical level. Very often in dealing with organized crime problems, the decision to make an arrest in gambling or even in a narcotics case is left to the individual team of officers. This is a poor practice, in my opinion. Usually there is time

for that decision to be made at a higher level of supervision or management, and that is where the discretion should be exercised.

There should be undivided responsibility for each individual officer on a continuing basis. By that I mean that very often officers are supervised by different people during different tours of duty and different assignments. The point I'm attempting to make is that there should be one supervisor responsible for the ongoing review of the work of a particular officer in order to be able to identify the individual who may not have the judgment, the personality, the emotional stability to deal with the rigors of police work; and this provides the opportunity to carefully evaluate and observe such an officer and to provide him the training or counseling or other assistance which may be of help or, in the ultimate, to make the difficult decision to separate that officer from the service.

There should be accountability at all levels of the organization. That is a very important part of regulating police practices. At every level of supervision and management people must have that responsibility, and they must be held accountable for the performance of their individual officers, understanding the limitations that exist by the very fact that officers operate most of their time individually but without being under direct supervision. But, of course, it is possible to supervise their work to some reasonable extent by a review of the reports of their activity.

Finally, there should be credible, high-level review concerning serious misconduct cases by police personnel. Now, whether this high-level review is internal or external, it should always be credible; that is to say, it should be above sustainable attack by a civilian complaint review board, a mayor, a city council, a district attorney, a Federal Government agency, a human rights commission, or the news media.

There are obviously many legal dimensions to this difficult problem of regulating police practices. What I am attempting to air in today's discussion is an understanding of the great importance of organization and management in controlling practices as they occur on the street and by individual police officers.

Thank you.

COMMISSIONER RUIZ. Mr. Murphy, you have suggested some priorities and standards which should be considered in rulemaking. We are very grateful for your contribution.

The next panelist will be James Fyfe. Lieutenant Fyfe has been with the New York Police Department for 15 years. He has been associated with the New York City Police Academy in several capacities, as the chairman of the police science department, where he was responsible for the research and development of a new entry-level curriculum; as director of the firearms discharge assault research project; as commanding officer of the management training unit, where he coordinated all training for personnel above the police officer level; and as coordinator of the executive development program, a program which

produced the curriculum for the inservice training of captains and above.

Lieutenant Fyfe has a B.S. in criminal justice from John Jay College and an M.A. and Ph.D. in criminal justice from the State University of New York at Albany. He has taught, lectured, and published extensively in the area of criminal justice. Mr. James Fyfe.

STATEMENT OF JAMES FYFE, NEW YORK POLICE DEPARTMENT

LT. FYFE. Thank you, sir.

I am going to address myself to four questions on the agenda which have to do with police use of deadly force. Before I do that, I guess it would be appropriate to give my basis for speaking.

In 1972 the New York City Police Department promulgated guidelines which restricted the use of police guns far more than the formerly operative penal law provisions had done. Prior to August 1972, at which time Mr. Murphy was Commissioner of the New York City Police Department, the police officers in New York City were limited in using their guns only by statutes which said a cop could fire his gun in defense of life or in order to apprehend someone for one of several violent felonies.

Mr. Davis and Mr. Murphy have pointed out that there has been a lot of criticism of the absence of policymaking and decisionmaking by police administrators. Some of the criticisms that have been leveled at those broad, statutory, firearms-discharge restrictions include the argument that they're very broad, that they're very obsolete. Very few people in the United States—Gary Gilmore is the only exception I can think of since 1967—even after having been proven guilty beyond a reasonable doubt of some crime, are subject to the ultimate penalty. The argument that is raised is that we are allowing cops on the basis of reasonable cause to put people into their graves.

Statutory restrictions are also operative statewide. They make very little differentiation between rural areas and urban areas, and it's very likely that a police administrator in an urban area would want to limit his police officers in the use of their firearms in ways that an administrator in a rural area would not.

Another problem with statutory limitations on firearms is the difficulty of demonstrating a violation. If we don't hold a police officer accountable for using his gun and the only limitations we have on him are written into a State penal code, we have to demonstrate beyond a reasonable doubt that he was guilty of some criminal violation. A lot of things have been written about why that very infrequently happens.

So, in 1972 the New York City Police Department promulgated these guidelines. Basically, what I had done was to conduct an empirical examination of the use of deadly force by police officers in New York City and the use of deadly force upon police officers in New York City.

I think when we talk about deadly force, it is important to note that we shouldn't measure it in terms of body counts, because deadly force really involves a police officer's decision to pull a trigger. What happens after that is a matter of chance.

Based on my analysis, what I found in response to the questions on the agenda were these answers: One question asked whether firearms policies are effective—are they effective in reducing the incidence of police use of deadly force? In New York City, I think they were. In New York City the joke is made that data accumulates very quickly. So we can do some statistically significant studies of these things. In New York City the policies did reduce the use of deadly force significantly. Prior to the guidelines, 18.4 New York City police officers were shooting their guns every week. Following promulgation of the guidelines, that declined to less than 13 per week. So that is a pretty considerable decline in the face of continued increases in other indices of violence within New York City—arrest rates, homicide rates in New York City. So that's a pretty considerable decline.

What's more interesting is the type of situations upon which the firearms guidelines impacted most directly, and they had to do with fleeing-felon situations. Those incidents were reduced by 75 percent. The defense-of-life shootings, shootings in which officers reported shooting to defend their own lives or the lives of someone else, remained fairly constant. They've decreased 15 or 18 percent. The most controversial shootings decreased 75 percent. So that's a pretty considerable decrease.

So they are effective in reducing the use of deadly force. Now, which policies are most effective is another question that the agenda asks. New York City's guidelines don't prohibit shooting at fleeing felons. New York City's guidelines make the argument that the gun is a device primarily for defense of the officer's life and should be used as a last resort. It never says that you can't fire at a fleeing felon. In application, however, we find that police officers are usually disciplined for firing at fleeing felons. I don't think that that's done arbitrarily at all.

Another policy which is included within the New York City policy statement which urban administrators should consider seriously is the prohibition on shooting at or from motor vehicles. That might be a justifiable policy in rural areas, but in a densely populated area like New York City, it doesn't make very much sense. We have done studies which show that it's almost impossible for a police officer's service weapon to fire a shot that will penetrate an automobile. What we're left with then is a bullet bouncing around down Broadway with no control. Even if the officer does succeed in shooting the person in the car, he's now got a vehicle driving down Broadway at 80 miles an hour without a driver. So that policy seems to me to make a lot of sense.

Another policy which hasn't been adopted in New York and which I think should be considered by all police administrators is the require-

ment that off-duty officers carry their guns with them at all times. Of course, the justification for that is that a police officer is paid to be on duty 24 hours a day. Police unions like to make those arguments at contract negotiation time, but we've heard Mr. Davis talk about the fact that full enforcement doesn't exist among on-duty officers, and it's questionable whether or not it exists among off-duty officers. What I've found, to cut things very short, was that off-duty officers quite frequently got in trouble for using their guns, and if we could measure the benefits that we gained by requiring off-duty officers to carry their guns and compare that against the negatives that result, we could develop some sound policies.

Another important consideration which doesn't specifically address violence policies is the general operating philosophy of the police agencies. An awful lot of police agencies have very violence-centered reward systems. Police officers become detectives, get promotions, get medals for encounters that have pretty tragic endings. I think a good example is the existence of SWAT teams, special weapons and assault teams, in some police agencies, and the existence of things called hostage-recovery teams or hostage-negotiation teams and others. Both those units really define where an agency is at. Which is the elite unit within a police agency: is it the SWAT team or is it the team which considers the successful recovery of a hostage, a bloodless recovery of a hostage a success? So I think that says an awful lot to the troops on the street.

Deployment patterns also affect the use of deadly force by police officers. I found that a change in the deployment of our narcotics unit personnel, we do see their involvement in violence and in police shootings and the injuries that accrue to them pretty considerably.

Another interesting consequence of the implementation of firearms policies in New York City was that it reduced the incidence of deadly force, but it also reduced the consequences of police deadly force. You might expect that if police are firing fewer shots, that fewer citizens would be injured and killed, and that was exactly the case. We had very dramatic decreases in that area. We also had very dramatic decreases in officer injuries and deaths, which is pretty interesting and which would counter the arguments of police unions that firearms restrictions handcuff the police, unnecessarily restrict the police, make the police officer's job much more dangerous. In New York City, at least, we found that that's not the case. We can't attribute the reductions in police officer injuries and deaths to the firearms guidelines, but we can say at least that they do not make the cop's job more dangerous.

The fourth question deals with the position of the unions in this area. In New York City there wasn't too much—at least I was not in a position to see too much opposition on the part of our police unions to the implementation of the firearms guidelines. Mr. Murphy was much closer to that situation than I was, but in retrospect, it seems

to me that he chose a very appropriate time, an unfortunately appropriate time, to implement them; and the firearms guidelines were implemented a few days after a 9- or 10-year-old boy was shot in a stolen car. The firearms guidelines were promulgated very soon after that. That particular time, I think, made it very difficult for the union to argue. Since that time, the firearms guidelines have been a dead issue among the unions. They haven't raised any resistance to them. They haven't had an incident to point to to say that the guidelines restricted an officer. It just hasn't happened in New York City. I know that Professor Takagi talked this morning about how it has happened in Seattle, about how the Seattle police guild took the city counsel's proposed firearms guidelines to the people, but that just has not happened in New York City.

The question I skipped involves the value of firearms review procedures. Mr. Murphy just talked a few moments ago about the need for a credible, high-level review of police practices. I think that exists in New York City. All firearms incidents are reviewed at three levels. Any shooting is reviewed at three incidents in New York City. It's reviewed by a captain who is assigned to the street, a person from the field. It's reviewed at the next higher command level, which is the borough level in New York City; and it's reviewed by the Firearms Discharge Review Board, which is chaired by the chief of operations, the highest ranking uniformed officer in the department.

I've been through about 2,200 of their decisions. I don't see any arbitrariness. I think they run a very credible process. It's not a whitewash. They could dispose of cases in one of six ways. They can say that an officer's discharge was justified, and they say that in 70.8 percent of the cases. They can say that his discharge was justified, but that he should be retrained in tactics or in law. In other words, that he was in a valid defense-of-life situation, but perhaps his approach to the scene had put him there in the first place. That is short of a negative evaluation. They do that in almost 20 percent, 18.3 percent, of the cases. They can discipline an officer. They do that in 7.7 percent of the cases that I looked at. One and two-tenths percent of the cases I looked at involved the arrest of the officer for the use of his gun. Slightly more than 1 percent, 1.3 percent, involved the referral of the officer to either a psychologist or to the department's alcoholic counseling program. In just less than 1 percent, 0.6 percent, he was offered the opportunity to transfer to another, less-demanding assignment.

I think we do have a credible procedure in New York City. I don't say that out of parochialism. I think the fact that it is credible makes it acceptable to the troops. We don't have any resistance among the union. Having gone through their opinions, I don't see any that can really be criticized.

One thing that the high-level review has done is to eliminate arbitrariness. In the past, police officers' shootings were evaluated and reviewed by a captain from the field; and quite often—Professor Davis

was talking about the difference between policies and rules—the department's policy still remains that a police officer who loses his revolver should be disciplined for failing to safeguard his revolver. In the past I saw quite a few instances where police officers were shot and then had their revolvers taken from them by the person who shot them, and they were found to have acted very honorably except that they were disciplined for failing to safeguard their revolvers. So I think that's sort of a counterproductive policy or counterproductive interpretation of the policy which encourages police officers to engage in violence rather than to lose their revolvers.

The high-level review, I think, demonstrates the continued interest of the very top of the agency in the use of police officers' guns. It also holds accountable the people along the chain of command for passing along valid investigations and valid reports on those investigations.

I thank you.

COMMISSIONER RUIZ. You have extensive experience. You have mentioned other structured rules and variable successes. Thank you for your personal insight based upon your personal experiences. Thank you again.

The next panelist is Lawrence Sherman. Dr. Sherman is a professor at the Graduate School of Criminal Justice of the State University of New York at Albany. He is also the executive director of the National Advisory Commission on Higher Education for Police Officers. He served as a consultant to a number of organizations involved with policing, including the IACP and the Police Foundation. He holds an M.A. in social science from the University of Chicago and an M.A. and Ph.D. in sociology from Yale University. He has published extensively on topics such as police corruption, police education, and the use of deadly force.

Dr. Sherman is currently engaged in a study of homicides by police officers, one objective of which is to examine the consequences of alternative public policies which restrict police use of deadly weapons and deadly force. He will appear on a subsequent panel entitled "research and data needs." Dr. Lawrence Sherman.

STATEMENT OF LAWRENCE SHERMAN, GRADUATE SCHOOL OF CRIMINAL JUSTICE, STATE UNIVERSITY OF NEW YORK AT ALBANY

DR. SHERMAN. Thank you, Mr. Chairman.

This afternoon I would like to provide a rather ambitious effort but a very brief one, and that is an overview of the systems both outside and inside police departments for regulating and controlling police misconduct. I'd like to suggest, first of all, that the external systems are generally ineffective insofar as they are currently operating; that the internal systems for controlling police misconduct can be and in specific instances have been very effective, but they are generally not used to their fullest potential; and that paradoxically perhaps the best

way that the United States Civil Rights Commission can improve the control of police misconduct is to stimulate increased internal control through a higher level of outside control by a very crucial Federal agency in this area, one that hasn't done nearly as much as it could but that could do much more, and that is the Federal Bureau of Investigation.

What I'd like to recommend and document with my remarks is the creation of a police misconduct investigation unit as a specialized unit within the FBI, which should not only deter police misconduct itself, but perhaps more important, stimulate greater internal control of police misconduct by police departments as a means of avoiding investigations by the FBI.

First, I'd like to begin just briefly with some definitions. There are two different kinds of misconduct. One of them we haven't talked about very much, and that is police corruption, commonly defined as the misuse of police authority for personal gain by police officers or others, and that is the kind of misconduct that runs contrary to the manifest crime-control goals of police departments. I think you'll find in my analysis that support for steps to control corruption is much stronger because corruption runs against the goal of crime control.

The second kind of misconduct, the kind that we've heard mostly about today, the excessive use of force, the violations of due process guarantees in police operations—that kind of misconduct is widely defined as being conducive to the control of crime; and, therefore, the level of support for efforts to control that form of misconduct, both in the community at large and within the police community, is much lower than that for corruption. What I'd like to do is to see if we can't learn some things from the control of corruption that might be applied to the control of excessive force and violations of due process.

The systems for the control of police misconduct, both external and internal, can be divided rather crudely into two parts; that is, those that are preventive or policy related and those that are punitive that respond to specific acts of misconduct after the fact.

The systems of external control for setting policy, I would suggest, contrary to Professor Davis' interpretation, are quite powerful, but they are very informal. That is to say, there's a good deal of political input at the community level guiding the determination of police department policy that, while it does leave a good deal of discretion to the officer on the street, provides what James Q. Wilson has described as a broader or narrower zone of indifference about what the police do. I think that although we can decry the fragmented structure of control of the American police—the 17,000 police departments, most of which have less than five officers—and although we can decry a situation in which local communities can implement values and standards for police behavior that are strongly opposed to what we might believe should be employed, the fact of the matter is that police department policies are set locally and do vary widely from one commu-

nity to the next, not according to the personal biases of the police officers, although those biases may be in accord with the local community biases, but, rather, as I would suggest and as many political scientists have suggested, according to the civic culture of the community; and I think that's probably the root of the problem for dealing with the kind of police misconduct that concerns excessive force and a violation of due process.

As a number of national surveys conducted for the riot commission in the late 1960s have shown, there's a good deal of support on the part of the American people for the kind of police behavior that we have heard described here today, particularly by the community groups, as misconduct. One of the surveys, for instance, found a very large majority of American people saying that the act of hitting a protestor was not violence, providing strong support for police hitting somebody who is rude to a police officer; and although those perceptions may have changed since the turbulent days of the late 1960s, I think there's still fairly extensive evidence that much of the American public supports police force used to a degree that, while we might define it as misconduct, they define it simply as doing the job; and, indeed, there are organized groups that are strongly opposed to any efforts to restrict the level of force which the police use to do their job, on the grounds that it will hurt crime control.

It's not just a question of force. There's also a question of the degree of intervention in the privacy of individuals. James Q. Wilson, again, has just recently published an article which strongly suggests that the aggressive patrol, the field interrogations, stop and frisks, the checking for every traffic violation and suspicious circumstance in automobiles—the kinds of tactics that do in fact weigh heavily on minority communities—James Q. Wilson suggests that those tactics do have a deterrent effect on crime; and I think that if that is the case, we've got to start dealing with some very tragic choices of values in this society between crime-control levels and the degree of personal intervention or public intervention in our personal lives.

But, regardless of the empirical evidence, there are many people in this country who believe that that's precisely what the police should do, not just to gay people, to black people, or to other minorities, but to anybody who looks suspicious. But once again, this varies widely across communities; and, as Peter Rossi found in his analysis of riot commission data, the attitude of the mayor towards those kinds of practices is highly correlated with the extent to which police officers say they engage in those kinds of practices which, again, many here would label as harassment.

Now, there is room for optimism in terms of external input into policymaking by the police. For instance, in the area of deadly force, not just New York City, but in recent years the Los Angeles Police Department, the Dallas Police Department, the Birmingham, Alabama, Police Department, Kansas City and San Jose Police Departments have

all implemented more restrictive policies for the use of firearms; and the evidence from almost every one of those cities shows that there has been a decline in the number of citizens killed and injured by the police, with unclear effects on such other issues as injuries to the police, but those are some of the problems we are looking at.

I think generally we are still facing the problem that there's too little pressure from the community at the local community level for the control of police misconduct, and that leaves us with the other areas of external control, and that is punitive control. There are a number of different structures that have been proposed or that exist with the potential of punishing either individual police officers or, in the larger sense, police departments as a whole.

One of the most popular proposals is, of course, the civilian complaint review board as an external agency that has exclusive jurisdiction for a police department for reviewing allegations of police misconduct in particular instances. In city after city throughout the past 10 years, this structure has been proposed and defeated either by the voters or by the legislators; and although I think the unions which opposed the civilian review boards overestimated their potential for "handcuffing the police," I think the proponents have perhaps overestimated the value of that kind of agency in deterring police misconduct. Generally, as the agencies were set up, they lacked strong investigative capability; they lacked the power to impose sanctions; and without both of those tools, I think they were doomed to be relatively ineffective.

But one of the reasons they were proposed is that the district attorney—who had the original criminal jurisdiction for police misconduct in almost every major city in this country 10 years ago, and that's still largely true today, although it's changing a little bit—has refused to take vigorous action against police misconduct. The district attorney depends institutionally on police manpower resources for conducting the investigations that make the district attorney appear in the headlines as a crime fighter, and as the Knapp Commission in New York pointed out, district attorneys are generally reluctant to do anything that will alienate the police department from supporting the district attorneys. So we find that even outrageous horror stories of police violence are either not referred to the grand jury by the prosecutor, or when they are referred to the grand jury, the grand jury is used simply as a covering device, saying that the grand jury, which was clearly under the control of the prosecutor, found that there was no basis for an indictment.

Above the local-level district attorney, we find that the State, which could do a good deal under State authority, is doing almost nothing. I've just recently written to every State attorney general in the United States asking them if they could provide me with information on the number of prosecutions of police officers for homicides in their States over the past several years; and although I haven't received all the

replies yet, not one of them even claimed to have any interest or jurisdiction in that problem, let alone to have ever taken any action in that area. Some of them clearly are limited by their legal authority, but others do have the authority and simply have not defined it as something that they should be doing.

The State level could be doing inspections, setting standards for police departments under the LEAA funding for the State planning agencies. They could be issuing reports critical of police misconduct, but they are not. The State level of government is almost nonexistent in relationship to this problem.

That leaves the U.S. Attorneys insofar as government levels are concerned, and although they have been undertaking more prosecutions in recent years, they have been plagued by a low level of convictions; and even when they do obtain convictions, they face the problem of locally grown judges who, as in the Joe Campos Torres case in Houston recently, provide wrist-slap sentences even when the crimes involved are very serious, a sentence which in that case was upheld despite the opposition of the Justice Department. Many U.S. Attorneys have the same problem of coming out of a local community and having a great deal of allegiance to local institutions, not wanting to rock the boat by taking action against police misconduct.

More important though, perhaps, is the fact that the U.S. Attorneys depend on the FBI to conduct their investigations. The FBI has depended heavily on local police departments for the making of their reputation. J. Edgar Hoover was very skillful in doing things like having the police department solve the bank robberies and having the FBI come in at the last minute and take all the credit and the glory. Without local police departments, the FBI could not have gathered their reputation. Without local police departments, they might lose their reputation as crime fighters; and in city after city they have refused to take vigorous investigative action against local police departments. I know that empirically it occurs more in the corruption area than in the violence area of police misconduct, but I think you will find the pattern is the same; and the reason is that the FBI is organized geographically, so that a local field office works in all areas on a continuing basis with a local police department.

Now, what I want to suggest to you is that if a specialized unit working out of a regional office or perhaps out of the Washington office, which had no ties to local police departments whatsoever, no dependencies within that unit on friendships of local police, if a unit of that nature were created and turned loose on police misconduct problems and given the bureaucratic mandate to generate some statistics, to show some prosecutions, some convictions, I suggest to you that they would in due course make arrests of police officers and provide stronger evidence in more cases to U.S. Attorneys to prosecute under the Federal civil rights statutes, perhaps under the Hobbs Act in the corruption area, and so forth. Without that kind of investigative

backup, I seriously doubt that the best efforts of the Civil Rights Division of the Justice Department here in Washington can make much difference in the problem throughout the country.

If we turn away from the governmental area, we find both civil litigation and the news media as forms of external control that have been used, but are generally ineffective. The civil litigation, as the survey of civil litigation on police misconduct conducted by the Americans for Effective Law Enforcement has pointed out, is less often used by those who need it most. That is, the indigents, who seem to be the most frequent victims of police misconduct, are not using it. It's more something that lawyers who find a good opportunity for making a fee take upon themselves, and many of the cases therefore are groundless. The courts are being overloaded or perhaps getting more of this stuff than they should, and although it is creating an insurance crisis for the police departments, I suspect that the very low success rate of those cases means that there is very little impact achieved on the police misconduct problem.

The news media has been very helpful in changing the police in particular cities, but those cities are very few; and the problem is that local advertisers tend to be strong supporters of the police, strong supporters of a very tough crime-control posture, and if a newspaper gets too vigorous in denouncing a local police department, it may find its advertising revenues dropping seriously.

So, just to summarize the external control systems, I would say that they are generally weak and ineffective, that there is a good deal of police autonomy in terms of using practices we may in this city disapprove of, and that that autonomy is supported by widespread public beliefs at the local level, beliefs which I think could be overriden if there were vigorous Federal action, vigorous Federal prosecution, that local police departments would try to avoid by implementing stronger internal controls. That raises the question of, can the police effectively regulate themselves?

I think I will skip what I was going to say on administrative rulemaking because we've had a fair amount of discussion on that issue. Generally, though, I think we will all agree that there has been very little effort in the area of setting administrative rules of a detailed nature. Most rules that now exist, although they may be detailed, tend to be rather vague or more often ignored.

However, in the area of corruption control, and particularly in the administration of Patrick Murphy in New York City, the use of rules has been very effective at preventing police corruption through things like the supervision of drug and gambling arrests, which Mr. Murphy mentioned, through the policy on not enforcing certain kinds of corruptive laws, such as gambling laws and the Sunday Sabbath, through adopting a policy of giving investigators cash advances rather than requiring them to lay money out of their pocket which they feel they have to earn back through some money on the side.

But those kinds of policies have not been tried to prevent the use of force or the violations of due process, and I suggest to you that the reason again is that there hasn't been external pressure. The policies I mentioned in New York were only adopted under strong external pressure from the Knapp Commission, which was concerned with corruption and not the other forms of police misconduct; and I think that, given the lack of that kind of pressure, it's very difficult for police administrators to focus on dealing with these kinds of issues.

It's even more difficult in the punitive area of internal control, again, an area that we found a good deal of success in in my research, which was funded by the police division of the National Institute of Law Enforcement and published in the book *Scandal and Reform*. Research suggests that the police investigative units, which have generally been do-nothing units created more as window dressing than as a serious effort to control police misconduct— When a scandal occurs, in a few instances in the cities I studied, the internal affairs divisions have turned into vigorous units for the control of police misconduct. They have pro-actively sought out instances of misconduct rather than sitting back and waiting for complaints, but they've done that in the area of corruption more than the area of violence and violation of due process. I would suggest to you that the techniques they use to control corruption can also be effective in the control of violence and violation of due process, but that those techniques will not be adopted until there is substantial pressure created by having the FBI breathing down local police departments' necks.

Thank you very much.

COMMISSIONER RUIZ. Dr. Sherman, you have given us an excellent overview of police conduct and particularly the internal control phase of it, as well as the importance of investigation background for better law enforcement.

Now, we have run the gamut of no standards for police discretion, on the one hand, and, on the other hand, to definite priorities and standards. I am sure that all of the panelists have had their thoughts prompted by other panelists, and I would like to ask Mr. Davis a question. Are there any additional thoughts that you may want to bring out at this time after listening to your colleagues?

MR. DAVIS. Thank you, Mr. Chairman.

Mr. Murphy spoke of the need for accountability at all levels, and that seems to me to link up with what Chairman Flemming has said, that two assumptions have guided this conference. The second one is, local governmental and police officials will institute and enforce departmental policies which protect the rights of citizens if they can be held legally accountable for the actions of their subordinates. I'm not sure whether these two statements, the one by Mr. Murphy and the one by Dr. Flemming, have in view the same idea. I'd like to know, what is the meaning of accountability, Mr. Murphy?

MR. MURPHY. Accountability from the point of view of the police administrator would mean that people at various levels in management or supervision would have it made very clear to them that they are reasonably responsible for the performance of their subordinates, and within the authority of the police administrator when it is determined that a manager has failed, has not held his people reasonably accountable, he would in some way suffer the consequences, such as he might be removed from the position of responsibility, he might be demoted in rank, he might be urged to retire, if he were eligible, rather than suffer a demotion. So, looking at it from the point of view of how the administrator makes his organization perform, it means to me that the buck cannot be passed from the supervisor or the manager unreasonably down to the individual, but that the person in management must exercise every authority and power available to him to see that standards are met.

COMMISSIONER RUIZ. Are there any other questions by any panelists, any good, thought-provoking ideas that you'd like to throw into the hopper? Mr. Schwartz?

MR. SCHWARTZ. I'd just like to take issue with one of the comments made by Professor Sherman, which was the comment with regard to civil suits against police agencies, that they are not being used by the people who should be using them, the indigents, and that many lawyers or attorneys are using them just to make a buck. I don't think that's true. I do think the indigents are not using them, but that's precisely the reason why they are the predominant victims of police abuses, because the indigents don't have the resources to take advantage of whatever civil remedies are available; and, second, they make good targets for police abuse because they are seldom the pillars of society, they are seldom sympathetic to juries, and they seldom can devote the time and resources which are necessary to pursue litigation against the police.

In the second case, with regard to the lawyers trying to make a buck, there are plenty of ways for lawyers in the United States to make money. One of those ways is not by representing clients in police abuse cases, because the deck is stacked against you. The police have all sorts of immunities, including immunities for actions undertaken in good faith where the action may have been wrong, but so long as it was taken in good faith, it's not compensable. The police are experts at testifying and experts at gathering evidence. It's seldom that anyone can sue the police and end up with a large judgment. That is to be expected. I just don't think that the lawyers are out there representing the wrong clients and trying to make money off it.

COMMISSIONER RUIZ. Mr. Sherman, do you wish to comment on Mr. Schwartz's comments?

DR. SHERMAN. I would agree that the indigents are the people who need it most and suffer the most from police misconduct. My point about their not getting it even though they need it the most is derived

from the statistics in the LEAA survey, which showed, I think, that only 20 percent—it may have been less, but I can't recall—of the plaintiffs were represented by publicly appointed counsel, legal aid, OEO [Office of Economic Opportunity], and the like.

As to the evidence that many of the cases are relatively without foundation and are undertaken by lawyers who are trying to make a buck, I agree that there are many ways that lawyers can make money and that, given the low conviction rate, this does not seem to be one of the more profitable ones. The statement was made on the basis of comments that I've heard, certainly from a large number of police executives, but also from people who have less of an interest in the suits, people who serve in the legal profession in a number of cities. It's not systematic evidence, and I want to say that I think Mr. Schwartz probably knows more about it than I do. So I'll defer to his viewpoint.

COMMISSIONER RUIZ. Lieutenant Fyfe, you are the only one who hasn't spoken yet. Do you have a thought?

LT. FYFE. Just one and it has to do with something that Professor Davis raised before when he was talking about the promulgation of enforcement policies. He mentioned that there was an issue over which should be confidential and which should be publicized. I've just been sitting here reflecting on which enforcement policies should be confidential. I don't know. Perhaps I'm naive, but I don't see any reason for known arrest decisions to be confidential. If you could reply to that.

MR. DAVIS. Well, I can imagine difficulty if the Chicago police were to announce that they do not arrest for possession or the use of marijuana. I suppose it would stir up an issue, and stirring up that issue at this stage on that question is unlikely to be very productive. But I think on a good many other policies where there is nonenforcement in fact and where the community will rather fully approve the nonenforcement in fact, such as, for example, drinking in the park at a family picnic, where nobody else is disturbed and they have some beer or some wine, it's a crime, but if the department would announce, "We don't do anything about that; we don't have time; our resources don't permit it," that can be open. I would say that there are some pretty sensitive issues that I would prefer not to bring out into the open unnecessarily.

COMMISSIONER RUIZ. Thank you very much.

Commissioner Frankie Freeman?

COMMISSIONER FREEMAN. Dr. Sherman, you made a statement, and I believe other panelists have also made the statement, that the complaints of police abuse as were described this morning actually are condoned by the community, and I would like to know if you were referring to the total community that includes minorities, women, and gays or a particular segment of the community?

DR. SHERMAN. I'm definitely speaking about a majority of the community that probably at no place exceeds 60 percent, and my point

about variation among the cities in this regard, I think, should be emphasized because there are places like New York City where the majority of the electorate is strongly opposed to most of the kinds of police misconduct that have been discussed today. I mean, even in New York, I suspect it would vary from election to election. I wouldn't want to venture to say what would happen if you had a referrendum on a particular issue. The CCRB [civilian complaint review board] issue in New York was defeated by the voters in the sixties, but I think it definitely is the classic problem in democratic theory that in many cities you would find the majority of the people uphold practices that are unconstitutional and clearly illegal, but they support the police use of those practices and through their attitudes constrain the institutions of justice from taking action against illegal police behavior.

COMMISSIONER FREEMAN. There was horror expressed at the suicides of 912 at Jonestown. Should there have been such horror if what you said is occurring?

DR. SHERMAN. I am personally horrified by any loss of life for any reason, and I would hope everyone else would be. When I was speaking on police homicide in our introductory graduate course this fall, one of the students in the class, a graduate of one of the finest liberal arts colleges in this country, said to me, "Is this really a problem?" I said, "Well, at the very least, 300 to 400 people a year die at the hands of the police," and he said, "Well, what's 300 or 400 lives more or less? I mean, come on, in the total scheme of things is that very important?" I was horrified, Madam Commissioner, at that statement.

COMMISSIONER FREEMAN. What you're really saying is that this society is pretty sick?

DR. SHERMAN. I don't know that biological health is a good way to look at societies, but I would say that Americans—

COMMISSIONER FREEMAN. Mentally sick?

DR. SHERMAN. In comparison to other cultures, particularly in Western Europe, this country is definitely a violent society. That is to say, it has a higher level of support for violence than some of the northern European countries that I'm familiar with, and that's been documented by survey research.

COMMISSIONER FREEMAN. Any other comments on that?

MR. MURPHY. The comment I would make is that because we are such a violent society, we have such a high rate of murder and homicide in the population that, generally, unfortunately for the American police, they confront much more violence than the police in some of the European industrial democracies, for example, and in the course of any year we have seen the number of police officers killed to run as high as 130, although, of course, more citizens are killed by the police than that.

Now, the number of people killed by the police will range from cases where without a doubt in any of our opinions the police officer had every right to do that to protect his own life or the life of another

innocent person, all the way to across a range of questions that were what we would call very close calls, to doubtful cases, all the way down to the part of the spectrum where police officers killed without any justification whatsoever.

So the point I would like to make is that it's not fair to the police to generalize too much about this problem. Police officers are human beings. They live under tremendous pressure in high-crime areas. We are very much aware today of the problem of stress among police officers, and they feel very much misunderstood and often rightly so, because this complex problem too often is stereotyped. We say police are brutal. Yes, there are some brutal police. There are many police officers who risk their own lives and jeopardize their own lives to protect others and worry about the day they would ever have to kill or even injure another human being.

So I think the problem is very much related to the level of violence in our society, the gun control problem, and of course all of the social and economic injustices of the society that cause too many Americans to live the kind of lives that generate this tension and hostility and violence in their own lives.

COMMISSIONER RUIZ. In order to stay within our time restraints, I sadly must state that we are going to have to wind up insofar as this particular panel is concerned. For that reason, I would like to turn the chair back to our Chairman, Mr. Flemming.

CHAIRMAN FLEMMING. I regret that it is necessary for us to bring this discussion to an end. You have raised some very basic and very fundamental issues. I personally would like to explore some of them still further such as this issue of policy being made primarily at the bottom and some of the discussion that has taken place relative to efforts to establish policy at the top. I am particularly interested in the progress, although it may not be too marked, in the direction of rulemaking. I noted the comment that this provides the public with opportunities for giving expression of their views. I'm just wondering to what extent the public does take advantage of these opportunities.

The dialogue was stimulated by the questions and the comments of my colleague, Commissioner Freeman, which of course is one that I think gives us all pause. We wonder ourselves how we permitted the public opinion in our communities to drift to the point where it does have the kind of attitude that has been expressed. Whether it is a majority attitude or a substantial minority attitude, it is very, very serious. Once again, we wonder what efforts are being made at the local level by organizations of citizens and coalitions of organizations of citizens to come to grips with an issue of this kind, along with some of the other issues that have been so clearly identified.

As the Commission, we are seeking to become acquainted with the basic issues in the area and to finding some recommendations dealing with matters that come within the purview of the Commission. I do want to express our deep gratitude to all of the members of the panel

for being here making the kind of presentations that have been made. Thank you very, very much.

If the members of the final panel for this afternoon are present, I would like them to join us at the platform. I would like to ask my colleague, Commissioner Saltzman, if he will assume the responsibility for this particular panel in introducing the members of the panel and conducting the discussion.

EVALUATING AND MONITORING POLICE PERFORMANCE

COMMISSIONER SALTZMAN. On behalf of the Commission, I welcome our next panel. The theme is "evaluating and monitoring police performance."

Dr. Terry Eisenberg, who appeared previously on the panel entitled "the police role," will lead off with this discussion this afternoon. He will share with us on this panel his expertise in job stress and evaluating the performance of police officers. Dr. Eisenberg.

STATEMENT OF TERRY EISENBERG, PSYCHOLOGIST, SAN JOSE, CALIFORNIA

DR. EISENBERG. Let me again repeat my thanks to the Commission for inviting me to participate in the proceedings, and let me also repeat my intention to keep my remarks as brief as possible to allow the other panelists to participate and to perhaps generate some discussion among the Commission members and panelists later on.

The agenda for this particular panel is varied. It involves police performance appraisal and promotion and some items pertaining to stress, police-community relations, citizen involvement in the policymaking process, and so on. So some of my remarks will try to address at least all of these areas in some part.

With regard to the performance evaluation and promotion area, I think we have to look at the performance evaluation programs in law enforcement agencies in terms of both formal and informal processes which are presently employed. The formal system is a more overt system that almost exclusively, or predominantly at the very least, takes the form of some kind of periodic supervisory rating of some sort that's either based on some form that's been developed by the police agency or the city or county. With rare exceptions, these formal appraisal systems are for all practical purposes useless, and most everyone knows that.

The informal system is a more covert system. It is usually, but not always, undocumented, and it basically consists of the attitudes of one's peers and supervisors as to one's police performance and competence. These attitudes and perceptions of one's peers are largely based on historical incidents involving that particular officer in some contacts that he's had in enacting and performing the police role.

So I think it is important to keep in mind both these formal and informal systems. The informal systems to the extent that they reveal

themselves, I think, are probably very accurate reflections of an officer's attitudes and his performance with regard to the way he functions as a police officer. The formal systems, again, are basically pretty shoddy and have very little value or utility from an administrative standpoint. There may be some police agencies around who perhaps feel that they have a formal evaluation system that is pretty effective, but in my experience I really haven't run across any. Some of this is supported by the fact that performance evaluations rarely play a significant role in promotions, for example. So supervisory ratings, which is what the performance evaluation, the form they will ordinarily take, will either have a minor or nonexistent role to play in making promotional decisions, which are reasonably important decisions.

It also accounts for the growth in assessment center testing, which the agenda refers to, which some of us may have opportunity to comment on later. It also accounts for the predominating use of written examinations, of all things, upon which to make promotional decisions from supervisory positions to command positions to chief executive positions.

So I think the reluctance and the lack of faith and confidence in continuing performance appraisals that law enforcement agencies find themselves with accounts for the use of written examinations, for example, in making promotional decisions, the lack of their use in making these decisions.

Again, there really isn't anything that I know of, no system that I know of in a performance appraisal sense that really works, although there seems to be some room for using peer ratings, for using supervisory ratings, and for certainly trying to quantify what police officers do in the way of commendations, complaints, and other measures of productivity.

There has also been some interest in using citizen evaluations of police performance, and I think that perhaps there is some potential in using citizen evaluations of police performance, but I really haven't seen them explored as yet.

With regard to the subject of stress, that has really had an almost explosive interest on the part of law enforcement agencies and communities, particularly over the past 3 years. In May of 1975, 3-1/2 years ago, the National Institute of Occupational Safety and Health convened a conference in Cincinnati, Ohio, which specifically addressed the subject of stress in police work. Since that time, there has been a tremendous amount of interest and activity pertaining to the subject of stress, what the causes of stress in law enforcement are, what the consequences of those stresses are, and what the remedies may be.

Many agencies today are involved in looking at programs that are designed to ameliorate the consequences of stress. There is a great variety of consequences of stress, which range anywhere from increases, for example, in disability retirements, which has become a

very great problem of law enforcement, to excessive citizen complaints, to various psychological and emotional problems that police officers encounter, whether they manifest themselves in alcoholism or divorce or hyperaggressive street behavior or whatever the case ma be.

In any case, I think that the topic of stress has emerged as a very important one in law enforcement, as well as in other occupations; and it perhaps has important implications to just about any personnel practice in police work that you might be considering, whether it be recruitment or selection or training, performance appraisal, promotion, career development, what-have-you. The causes, consequences, and remedies pertaining to the subject of stress, I believe, must be addressed.

In the panels today, both this morning and this afternoon, there has been some discussion of citizen involvement, police-community relations, participation in the policymaking, policy-setting, or policy-determination process. The whole area of police-community relations is a very complex one. There are other panelists here who have been very much involved in that area for many, many years and perhaps still find it puzzling.

I think one of the biggest sources of confusion that has to be considered in any discussion of citizen involvement or police-community relations—and this source of confusion, I think, has manifested itself in some of the discussions which have thus far taken place—has been our reluctance to be more specific and to define citizens and citizen involvement; that is, are we talking about citizens who are local elected government officials? Are we talking about citizens who are representatives of powerful special interest groups? Are we talking about citizens who are police officers? Are we talking about citizens who are members of various regulatory groups and commissions? Or are we talking about citizens who have little power in organization?

If we're talking about the latter group, I think there has been relatively little involvement of citizens at the local level in police policy settings, and I think to a large extent this has been also suggested by other members of the panel.

That's kind of a sketch of a number of different areas, but those will be my remarks for the moment.

Thank you.

COMMISSIONER SALTZMAN. Thank you, Dr. Eisenberg.

Our next panelist, Dr. Martin Reiser, is a psychologist. He is the director of the behavioral science services for the Los Angeles Police Department. He has been a psychologist with the Los Angeles Police Department for 10 years. He has written some 40 articles and papers in the area of police psychology and he is the author of two books, *Police Department Psychologist* and *Practical Psychology for Police Officers*. Dr. Martin Reiser.

STATEMENT OF MARTIN REISER, PSYCHOLOGIST, LOS ANGELES POLICE DEPARTMENT

DR. REISER. Thank you.

The title of our panel, "evaluating and monitoring police performance," implies, I think, to some degree external controls and ways of measuring performance, and yet my focus for the past 10 years has been primarily on what I would call internal locus of control factors, dealing with police officers' problems, problems of police families, problems with the administration—that is, individual police administrators—research issues within the police department, and that kind of thing.

I think that emphasizing a variety of external controls is important, necessary, but perhaps inadequate in themselves. I think many of the stated problems that I have been listening to so far at base to me seem related to problems of attitudes, values, and perhaps stress factors also; and I have the feeling that if we don't also address the underlying dynamics of behavior, that we may wind up with a kind of symptomatic approach using Band-Aids that may or may not contain the wounds that we're trying to heal.

I would like to review some of the stress factors as I have observed them over the years as they impact police officers. There are a variety of stressors emanating from within the system. The ones that I hear about quite frequently involve the officer's perception of court decisions, the delays that are involved when he is called to testify and has to sit around for hours and sometimes days waiting to be called, cases being postponed interminably. I hear also from the officers about what he views as the pejorative attitudes of court officers toward him—as he puts it frequently, "sometimes making me feel as if I'm the defendant and I'm on trial." I hear also from officers about what they feel is a revolving door in the criminal justice system where they are out on the street trying to hold down crime and keep the lid on, and in fact several days later, or weeks later, whatever, the same individuals that they feel should be off the streets are back again; and there's a feeling of futility that begins to develop in these individual officers.

Another common complaint I hear which is a source of stress to them is that there is a common feeling among the officers that I talked with that there seems to be a predominance of concern for offenders' rights in today's criminal justice system over the rights of victims in our society, and there are some stresses resulting from that.

There are also role-related stresses which impact on police people. Real dangers exist on the street. Our officers deal with crime, violence, which is endemic in our society and it's been alluded to by previous speakers. He runs a high risk of physical injury, but even more of ego injury on the street. He deals with many people who are provocative and hostile merely because he is a police officer. He tends to be immersed in a particular aspect of society which contains and exhibits violence, brutality, and gore, and he is in danger of generalizing from that to viewing society that way as a whole.

The officer is a symbolic authority figure, and merely because he wears the emblems of authority, the uniform, the badge, the gun, etc., he tends to collect attitudes and reactions from people, of a largely negative variety frequently. Many of us apparently have unresolved conflicts with authority stemming from our own early family situations, and the police officer represents a handy hook to hang these attitudes on. So that he deals with anger and resentment and has to learn to deal with it as a professional without taking it personally, and some of our younger officers may have a problem in that area.

Then there are the developmental kinds of stresses that young police officers are prone to developing. During the first 5 or 6 years on the job, very commonly they go through what I call the John Wayne syndrome, which involves aggressive and so-called badge-heavy behavior which in fact serves a survival function for the young officer, enables him to survive those critical early years when he feels vulnerable, when he's not yet competent and professional in his role; and yet to the outside observer, these behaviors are all negative and need to be controlled.

There are also the acculturation factors that officers encounter in transiting a career in a police agency. These are the values and attitudes that are accepted among his peers and among other members of the organization. There are very strong pressures from a police officer's peer group for identification and for concurring with group behavior. For a long time, and I think still today, police organizations have been what I would call primarily male fraternal-type organizations. To be one of the boys, to be accepted, and to be thought well of are all important kinds of variables to young police officers. The hallmarks of maleness in young police officers for a long time have been behaviors related to hard drinking, sexual activities, and the use of muscles as indices of demonstrating adequacy. Proving oneself in this sense, then, leads to a variety of liability-prone behaviors in encounters with citizens and suspects alike.

Then there are also organizational stresses that originate from within the police department itself, such as the hours that the officer works; and a study has indicated that officers working morning watch, roughly from 12 midnight to 8 a.m., are at greater risk in terms of certain kinds of family stresses and personal stresses and perhaps even biological rhythm dysfunction. There are frequent complaints of officers about the equipment that they have. There are strong competitive strivings among people in police organizations for promotions, assignments, getting ahead. I think, too, that there's an inherent problem in that most police departments follow a quasi-military model, and yet they espouse today, the enlightened ones, those chiefs of police who have studied management and so on, espouse management by objective and management by participation, and yet I think that there is an inherent contradiction in the hierarchy of a quasi-military nature and the concepts that participative management involves.

There are marital and family stresses in police people as well as in members of other occupational groups. Police officers, young ones in particular, as do members of other occupations, tend to put the job first and the family second, leading to an increased incidence in family problems; and there has been a particular problem with police officers' wives, in that historically wives have been excluded from participation in police organizations, whereas secretaries and female officers have been included. Officers' wives have told me that they resent being considered outsiders to the organization, and I think administrators need to do something about that, to have officers' wives included.

I would like to just briefly indicate that there are ways that stresses can be addressed and managed, I think, and in our department we have for 10 years had a program involving stress management and so on. However, interestingly, during that time I found relatively weak support from political structures and government entities and so on for the kind of things that we have attempted to do. For example, we have submitted grant proposals for funding research demonstration work in assessing and treating what I would call liability behaviors among police officers, complaint behaviors. We have also submitted grant proposals to utilize biofeedback and relaxation techniques as part of stress-management strategies. However, to date we have had no support, very little support, from outside our own department for these kinds of programs, and I think that's regrettable.

I think that police psychology is a new subspecialty in psychology. It's about 10 years old. It is growing slowly. There are perhaps 15 departments around the country which currently have full-time, inhouse, psychological or behavioral science staff people. There are even more agencies, I think, that contract with local universities or clinics for a variety of these services, and from my point of view, I think that much more emphasis on these variables would importantly impact the issues that this panel is addressing this afternoon.

Thank you.

COMMISSIONER SALTZMAN. Mr. Howard Saffold is a police officer with the Chicago Police Department and the national chairman of the National Black Police Association. He was instrumental in the formation of that organization, which now has 25 chapters in cities around the country. Mr. Saffold is a member of and a frequent guest speaker on behalf of the Afro-American Patrolmen's League. He is especially active in the area of police-community relations. Mr. Howard Saffold.

STATEMENT OF HOWARD SAFFOLD, CHAIRMAN, NATIONAL BLACK POLICE ASSOCIATION

MR. SAFFOLD. Ladies and gentlemen of the Commission, on behalf of the organization, I appreciate the invitation. I would just like to make one correction. We have 65 chapters.

I think if I could just take a second to talk about why there would be a need for a black police association in this country, it might take us a little closer to the bone in terms of my input into this particular discussion.

Ten years ago in the city of Chicago an organization called the .\fro-American Patrolmen's League was formed. As a group, we consider ourselves not to be the traditional fraternal brotherhood group. We consider ourselves to be a community organization that just happens to be police officers, simply because we saw a distinct difference in the way the police institution functions in white areas as opposed to black areas. We had three specific areas of concentration that brought us about in terms of an organization, specifically, racial discrimination, brutality, and corruption.

We formed our organization with three specific goals in mind, realizing from the onstart that we could only be a catalyst for the changes that we thought were necessary to come about if in fact the police were going to be an effective crime-control element in black communities. Number one, we tried to work towards improving the relationship between the police department as an institution and black people. Necessarily, that would cause us to break the traditional "we're all blue" syndrome and talk specifically about inconsistencies on the part of some of our fellow workers.

Number two, we tried to work towards improving the relationship between white and black police officers. Contrary to a lot of public belief, there is an awful lot of internal strife that exists right now, simply because the kinds of issues that are being raised here today are just not popular, and very few people want to discuss them in detail.

Our long-range goal was what we called total police reform, reform in the sense that we considered ourselves to be an extension of government to the extent that police officers did in fact and do in fact control a certain quality of life, in that we can make split-second decisions without asking anybody, decide whether or nor an individual lives or dies; and with that kind of independent power vested in us, it was imperative, as far as our organization is concerned, that we were not in a position to police ourselves. I'm sure as the discussion progresses, we will talk some about the control policies and enforcement of policies and etc.

I'd just like to say that my input here is simply one of several years of experience as a police officer, realizing very clearly that all police officers, be they white or black, are not brutes, nor are we, contrary to public opinion, the TV-characterized Kojaks and Mod Squads and others. The vast majority of our work is service work and after-the-fact work that necessitates us to have a working relationship with the public that calls upon us for our services, thereby necessitating an attitude on our part that in fact we are being called to render a service and not necessarily pass judgment on the character of the individual who is requesting that service based on economic income, race, or sex or any other such consideration.

So I think I will just sort of say that that's where I'm going to be coming from in this discussion, and I am looking forward to specifically discussing some of the stress factors, some of the police departments' evaluation of performance and the motives behind it, some of the goals that are officially articulated to officers, and etc. So I will sort of rest and hope that I will get an opportunity to interact from time to time during the discussion.

COMMISSIONER SALTZMAN. Thank you.

Dr. Victor G. Strecher is dean of the Institute of Contemporary Corrections and Behavioral Sciences at Sam Houston State University in Huntsville, Texas. The institute, which was formed 14 years ago, is designed to provide a broad spectrum of academic programs for the entire system of justice.

Dean Strecher worked for several years as a police officer after earning a degree in police administration. He served as police advisor to the Vietnam government from 1959 to 1961, setting up training programs for that country's police. He was head of the police academy in St. Louis for a number of years and was on the faculty of the National Center for Police and Community Relations at Michigan State for 8 years before becoming director of a similar program at Arizona State University. He became dean of the institute in August of this year. Dr. Victor G. Strecher.

STATEMENT OF VICTOR G. STRECHER, DEAN, INSTITUTE OF CONTEMPORARY CORRECTIONS AND BEHAVIORAL SCIENCES, SAM HOUSTON STATE UNIVERSITY

DR. STRECHER. Thank you, Commissioner Saltzman, and thanks to members of the Commission for having me here to share some thoughts with you today.

I would like to comment upon this matter of the evaluation of police performance from a specific point of view, really two different parts of it in a special way. First, I'd like to address a specific matter of what I might call state of mind. It overlaps something of what Dr. Reiser has already commented upon, a special kind of stress, I think. The second is the business of evaluation in general as it applies to the police service because I think there are some very special problems connected with trying to do that.

Like our very first speaker today, Mr. Meyers, I am going to start off by looking back about 10 years, and it's kind of an unfortunate backward glance because some of the material I am going to use today I wrote in 1967 through 1970, and I think the sad observation would be that not much has changed in those intervening years, and that gives a little bit of feeling of retrograde progress.

I am going to use a phrase that isn't customarily applied to the police service or even to domestic matters, for that matter. It is culture shock, and it's something that I brought to the field 10 years ago

because of international experience with it. It's used in the Foreign Service. I am going to go through a very short passage here that I think identifies it in a moment.

First of all, I want to get across these points. We've had some talk about this today already. First of all, to claim that there is such a thing as a police occupational subculture, that it is a very strong association of human beings, that they tend to organize their lives around certain common understandings and certain aspects of their life—again, Dr. Reiser hit upon certain of those and so did Dr. Eisenberg—certain assumptions about the world and the need for their place in it having to do with order, community safety, search for crime, all of those things have been rather well chronicled by writers about the police state of mind.

The second thing I would call attention to is the assumption that there is such a thing as a black ghetto subculture. This was particularly written about by Lee Rainwater [phonetic] in studying St. Louis. He spent over 10 years doing that and many other commentators have supported this kind of typology, that there is a Hispanic subculture in our nation, and that there is something else not too many have written about yet but it is gaining ascendancy, and that is a rural to urban poverty population which constitutes a subculture now living in our cities.

What I'm getting at is that our nation is very richly stratified. The question has come up here several times today, is there community support or is there not community support for a certain thing? Well, of course there is and there isn't, because there are so many communities. Our big cities are populated by multiple communities which have very little agreement about any of these things, and this is one of the things I feel we have to call attention to in discussing how the police function, how these sufficiently different population groups impact upon police performance and create certain kinds of stress.

Now, to define culture shock, and this from State Department publications:

> Culture shock is set in motion by the anxiety that results from losing all one's familiar cues. These cues include the thousand and one ways in which we orient ourselves to the situations of daily life, when to shake hands, what to say when we meet people, when and how much to tip, how to make purchases, when to accept and when to refuse invitations, when to take statements seriously and when not to. Cues to behavior, which may be words, gestures, facial expressions, or customs, are acquired in the course of growing up and are as much a part of our culture as the language we speak. All of us depend for our peace of mind and our efficiency on hundreds of cues, most of which we do not carry on a level of conscious awareness.

There are four phases of culture shock that have been identified, and these are clinically identified. The first is what has been called the honeymoon period, where there is a curiosity about a culture into which a person has been injected because of a working demand and some anxiety about it. Second, when one confronts the need to become effective to work there and make the work come out right, to function effectively, there is the growth of hostility, critical attitude, blame for their personal problems upon the inhabitants of the different culture, a seeking out of others who share these same feelings and pressures—a sharing of distress, in other words. That goes on for a considerable period of time in those who work in foreign countries. The third phase, which is almost always helped by those workers who have been through it, is an emergence from culture shock into an attitude of some superiority, some superciliousness about the culture, some joking about the problems, but a change away from bitterness, but still a condescension about it. The fourth phase is a relative adjustment to it and quite a good acceptance of the differentness of the other people's way of life.

Now, the next section here, I would point out this, and again quoting:

> It's stressed that the problems which lead the police officer into culture shock are real and not imagined. There is nothing quite so disruptive as a set of experiences which challenge one's working assumptions about the nature of the world and people living in it, nor does the personal difficulty caused by the initial cultural contact in the officer's adjustment if he weathers the attack of culture shock.

There is a more recent bit of literature on the subject which refers to something called culture fatigue, which I think describes many of the people working in law enforcement today. The term refers to something different than culture shock. Culture fatigue is the physical and emotional exhaustion that almost invariably results from the infinite series of minute adjustments required for long-term survival in a strange culture. Living and working overseas, and here I would say, in a part of the city that is substantially different than the officer's origin rather than overseas, generally requires that one must suppress automatic evaluations and judgments, that he must supply new interpretations to seemingly familiar behavior, and that he must demand of himself constant alterations in the style and content of his authority. Whether this process is conscious or unconscious, successful or unsuccessful, it consumes an enormous amount of energy, leaving the individual decidedly and continually fatigued.

What do we do about culture shock in American law enforcement? These comments about that: During the most severe phase of the symptoms of culture shock in young law enforcement officers, there is no attempt to relieve the symptoms. There is no minimizing of its

adverse effects upon the police-civilian relations during this time, and nothing is done to bring about a complete recovery. It is not surprising that culture shock and culture fatigue are not recognized in American police departments. After all, it is not customary to think of large numbers of our city residents as members of another culture, and yet it has been found, for instance, in another country, Peru, that when they send urban-reared Peruvians to work in isolated communities in their own country, speaking the same language, their own people, they suffer greatly from culture shock because of new surroundings and new ways of living. Actually, this form of subculture shock is similar to that we're talking about among policemen, and, make no mistake about it, the average, young, white, police recruit will experience culture shock soon after reporting for duty in a black poverty neighborhood, a Hispanic cultural area, or an area populated largely by recent migrants from rural areas of the country to the large city; and unfortunately he will find few resources to help him out of it, and I think here's the key point. In the average police department, symptoms of culture shock in young police officers appear to be considered a coming of age, a first hard contact with the realities of big-city policing, a contact in which the recruit is learning the proper way to regard the behavior of poor people, blacks, Hispanics, transplanted rural people.

Emotional support from experienced associates often comes from men who have also experienced culture shock and have now progressed into permanent culture fatigue. This support is less likely to sensitize the recruit as is done in foreign relations work, where they pay a lot of attention to this and guide them through a resolution of this conflict, but rather it's intended to toughen him to the long-run prospects of dealing with lower class behavior and to crystalize this toughness in the young officer. This creates a dilemma for the young officer, because, as has often been stated of those in culture shock, in the final analysis—this is right out of State Department briefing material—in the final analysis, our feeling of professional adequacy depends on how our colleagues evaluate us, not how anybody else evaluates us.

That is a particular form of stress which I feel almost compelled to bring before this panel, today, because I think it has been systematically neglected. I think it's there. I think if a close observer looks at the early symptoms of a police officer's induction into an agency, all of the signs are there, and something can be done about it as it has been in the Foreign Service.

Just a couple of comments about evaluation in general and the implied control aspect of it, two problems I would mention. The first is that of the mission, the goal, and the role of the police in this pluralistic, multicultural community we have in the big American city, particularly the ambiguities and goals which we've had remarked upon all day long, lead to ambiguities in performance measures. If you don't really know what you're doing or how you're going about it, how can you possibly evaluate the performance of those who are sent out there

to do this? The performance requirements of police officers are so varied and so gigantic, really what it is is "take care of all those problems out there," and how do you evaluate that? That's the first problem I would simply identify.

On the question of trying to identify more closely what those goals are, there is a lot of work being done, again, through the assistance of the Department of Justice and the Law Enforcement Assistance Administration, developing very good works in the area of managing patrol, managing criminal investigations, and other specific functions. Prioritizing work is being done and that sort of thing, all to the good. So, some of the ambiguity, I think, is going to be worked out a bit as time passes.

The second major problem relates to a phrase I would call close supervision, which has a technical meaning in management circles.

Over the years, in both training and educational work, I guess, as Dr. Reiser and Dr. Eisenberg, I've talked to several thousand police sergeants and I've always asked them the same question at some point: "How many minutes a day do you spend with each of your officers?" And the answer has never varied more than a few minutes. The range is between 10 and 25 minutes. I have never had a group of sergeants estimate that they spent more than 25 minutes per day with each subordinate. Well, I want that in the record for this reason. As varied and complex as the patrol officer's job is, as decentralized as the police officers are in the community, and as mobile as they are in automobiles, I think we simply have to assume that close supervision in the sense of an overview of performance, moment by moment, is just not feasible and never will be as long as law enforcement work is performed as it is.

So that leads to this kind of reasoning. There are really two kinds of influences that can be maintained over a person's performance behavior. One is implicit through means of condition. We educate; we influence by example; we induct systematically into an occupational setting. Acculturation was the phrase Dr. Reiser used well in this sense. We bring people into a set of assumptions and understandings, perspectives, and beliefs. That's implicit influence. Explicit influence I would express as the use of authority, just raw authority, coercive authority, if you will.

Now, as important as policies are, as important as inspection, employment of sanctions, all of those authoritative controls may be, I would say today that these have the same limited potential for affecting police behavior as they have for the general society in the rule of the law as coercive means. This mobility, decentralization, and the circumstances of individual police actions make any comprehensive and full supervision infeasible. Police personnel evaluation is presently primitive and ineffectual. I think Dr. Eisenberg said useless, just as good a word, and I think it reflects our confusion over what the police mission is really all about, and that, in essence, is unfair for that reason.

The police, as other human beings, are products of their expectations and experience. They are not alike or even similar when they are recruited and hired; they really aren't. Years of watching them come in the front door of the police academy have told me that. Most of their practices are responses to their daily working problems as they view those daily working problems and as they understand their peers do. As Professor Davis observed, these practices aggregate to form what we might call police policy at the top.

I have summarized these points: The need to emphasize, even rely upon, implicit rather than explicit influences over police authority; we need to educate; we need to do more role modeling and building through a refinement of the occupational perspectives and values of the police; we need to do everything we can to influence that; we need to do more training along that line. The occupational induction and influence process has to be refined, particularly in this respect.

Secondly, we need to provide for some ameliorization of culture shock and culture fatigue, based on an expert evaluation of that among young police officers as they get into the profession and experience all of the stresses of their new setting.

Third, we need to provide active and not passive police leadership. Most forms of police management are relatively passive forms. We need to activate that. We need influential managers who insist upon certain things and create a state of mind among the officers. They're not going to be able to see them more than 10 minutes a day, but they need to carry this message through the day with them, and we need to protect those managers where they are doing that well.

Next, we need citizen input to policy and procedure, and here I might mention something that may sound familiar to Commissioner Freeman. This has been going on for many years in St. Louis. It was asked this morning whether there has been experience of this kind. The community relations committees of the various police districts of St. Louis have a very long history now. The citizens do go there. They do go there to interact with the police officials. It's not the tea and cookies meetings between the chief and one or two community leaders where it's impossible to bring it down to the operational level. What they do at those meetings is talk about what's happening in that district with those police officers and those people, and that is a different kind of exchange. So, if a model is being searched for, I would suggest that the St. Louis experience of ever since 1960 might be an example in this regard as a model for that kind of interaction.

Finally, just a warning, because I have seen impatience all around, and that's that I think all of this would take a very sustained effort for durable results. If we are to affect the police subculture and the performance of the law enforcement personnel on the street, we're talking about not 2 or 3 or 5 years of efforts, but a generation, a whole generation of influencing performance, and then maybe we will see substantial changes.

Thank you for your patience.

COMMISSIONER SALTZMAN. Thank you, Dr. Strecher.

Our next panelist is Mr. Wesley Pomeroy. Mr Pomeroy is Special Assistant to the Administrator of the Drug Enforcement Administration. He began his career in law enforcement in 1942 with the California Highway Patrol, where he remained for 10 years. He served with the San Mateo County Sheriff's Department for 16 years, the last 8 of which he was chief deputy sheriff. In 1968 he joined the staff of then Attorney General Ramsey Clark as Special Assistant for Law Enforcement Coordination. One of his functions in that role was to train police administrators in the prevention and control of civil disorders. From 1974 to 1977, he was the Chief of Police of the Berkeley, California, department. Mr. Wesley Pomeroy.

STATEMENT OF WESLEY POMEROY, SPECIAL ASSISTANT TO THE ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION

MR. POMEROY. Thank you. My remarks will be relatively informal. They will center around four general areas. One will be citizen advisory panels, goals in making promotions, some comments on stress, and a couple of words about evaluation performance. It's a shotgun approach, but it's a large barrel you have us shooting out of today.

Citizen advisory panels can be quite useful and of great value, if there are certain basic, common sense criteria applied to them. First of all, and it seems obvious but it doesn't very often happen, they have to represent the community, and within that there has to be a realization of something that Dr. Strecher said, that one city is not one community but a number of communities. So, if one talks about that and community relations, one has to recognize that of the city, any city, except for small ones which are very homogeneous and becoming fewer and fewer.

Another requirement in setting up citizen advisory panels or using them is that they are chosen by communities, that they truly represent the people within them and the people on those panels are seen as people who do represent the people for whom they're speaking, and they should be close enough to them to be accountable to them.

Another very important criterion, and one that's almost universally ignored, is that once an advisory panel is set up that the police administrator pay some attention to them in real ways. They are too often seen as defusing kinds of mechanisms, and they do function that way; but they really ought to have some impact into police policy. They should really have something to say about how a police department is run. They should have something to say about how police services are delivered to them in their communities. The issues and problems that are addressed by the police department ought to be issues and problems that the citizens themselves consider to be issues and problems.

The advisory panels ought to be doing business with the police officers on the beat too because that really is where policy is translated. Very often it's where policy is made. The police administrator can make all kinds of policies. He can have a staff that sets up all kinds of planning, all kinds of projections, and develop all kinds of beautiful policies; and very often it won't get down to the beat level because what happens in a police department, the way a police department performs really in the final analysis, the kind of policy that's operational is that kind that happens out at night when nobody else is around. There has to be self-regulating with the police officers themselves.

This is a little bit out of context, but Strecher was talking about tight supervision, close supervision. Well, it's true. Police officers are not tightly supervised, and I'm not so sure they ought to be; but what we ought to recognize is that they can't be, because they're almost like individual contractors. If we accept that and we accept the notion, which is a reality, that police sergeants are really kind of brokers of a number of independent contractors, and they serve them in a way of setting up schedules, giving them days off, looking at the reports sometimes. If we recognize that, then we recognize that we must do a great deal more about the individual police officer. We must recognize that that person is really the most important person in the police department. I've heard people say that, but I haven't seen many people act like that. The police officers really are what the department is all about. The rest of it should be there only to serve what they do and be done in the right kind of way.

There are some real payoffs, practical operational payoffs for good "community relations." We almost don't say it anymore because it got to be sort of a buzz word for co-option after a while some years ago. But if we really do have police interacting with the people they serve in the neighborhoods where they work, it's going to have good solid payoffs in crime prevention. It's probably the only thing in my opinion that's going to make any difference to crime occurring or not occurring, because police departments as a function today have very little to do with whether the crime rate goes up or down. Just common sense will tell you that. I don't think there's any crime occurring in this room today. I think there is not. If there is not, it's because we who are here have a tacit understanding and we have a tacit social contract that we are not going to hurt each other or we're not going to steal from each other, and that's how whether crimes occur or not in the community are decided, by a whole host of social contracts, most of them tacit, about how those people, wherever they are, are going to act toward and with one another.

So, if that's true, then if you can begin dealing with people in the community where they live, the police officer can interact with them, he can be responsive, and the whole police department through him is responsive in the kinds of ways they see they ought to be responded

to. Then you're probably going to have some reduction of the crime rate. We saw some signs of that a couple of years ago in Berkeley or 3 years ago in Berkeley, when we started to go out in the community and try to get the police officers identified specifically with neighborhood groups, and they started talking to each other in that kind of way. We had a drop in burglaries in some neighborhoods where we didn't expect them.

Incidentally, there are some models being developed in those kind of relationships. The Law Enforcement Assistance Administration finally is doing something creative in that area, and they have a community crime-prevention program with some money out now. One of the criteria that's interesting is that no governmental entity can be a grant recipient. It has to be a community organization, and they appear to be working. The man in charge of that is Cornelius Cooper. I think it would be worthwhile to talk to him and find out what he's doing. It looks good.

As far as goals and making promotions is concerned, the police chief, or the person who makes the promotion, ought to be pretty clear about what he or she wants in terms of people that they're promoting. He ought to be clear enough to define the goals and to articulate them. You can do several things with that. Not only do you make it clear to the people who seek promotions what they must do or at least what they must say and pretend to do in order to get promoted, but you can send a clear message to the rest of the department.

One thing that occurred in Berkeley—I'll have to refer to my own experience—is that I published a set of criteria for promotions for all ranks. It said something like this: that by the time you get to me, the chief, I will assume that you have professional competence, technical competence. I'm going to now be interested in your attitudes. I'm going to be interested in how you see your job and what kind of commitments you make to it, and there are three things specifically I'm going to be looking at in addition to others. One is, I want you to be clear that you serve the people in the city of Berkeley and that you have a real interest in serving them, and that you're interested, that you want to come to work in the Berkeley Police Department and don't come in here with a different kind of an attitude.

The second criterion is that you must accept the legitimacy of the Police Review Commission and work toward a condition where it's ultimately conflict free between the commission and the police department, which, incidentally, was no mean task because it's going to take a little while before that finally works out, but it is going to work out.

The third criterion was that a candidate must understand some issues and dynamics surrounding the issues in race relations, must understand what affirmative action is, and have some ideas about how that can be applied to the Berkeley Police Department and how its policies can be changed to conform with it.

I might say that that was an interesting requirement because at that time we were under a *mandamus* quota, one of the "reverse discrimination" *mandamus*, that we could not consider race or sex in making any kind of promotion or personnel assignment.

Under that also I required that they would understand what institutional racism is, what it means, and be prepared to have some ideas about how the Berkeley Police Department could improve itself internally and how it related externally to the community and work toward getting away from institutional racism. What that did was to get people who were wanting to be promoted thinking about those things and trying to do something about them, or at least persuading me they were trying to do something about them. It also served notice on the rest of the department that that's what was going to happen from then on, and it worked better than anything else we tried, because months and months of discussion about institutional racism, for example, resulted mostly in denial. It's a very hard thing to deal with, incidentally, because people internalize it so much.

Talking about stress is something that's not talked about very much, but there was referral to the fact that a policeman's very interested in what his peers think of him. He wants to be accepted. He wants to be well thought of and all of those other things, and I think that's pretty reasonable. But one of the things that's not thought about much is the effect this has on the police chief and the absolute necessity that a police chief understand what kind of stresses he's under and how he has to work within himself to work against that seduction to be accepted by his peers, because after all, almost without exception, the police chief is a policeman and he's been a policeman all of his life. It's very hard to go against captains and lieutenants and inspectors that you like and respect as individuals if you're trying to make institutional change.

I'd like to say that police commissions ought to recognize that that is a potential. Also, when we're talking about stress we're talking about the young officers, but the police chief himself ought to understand that he's going to have stresses, and he might be the person who's less likely to be able to identify them or to perceive them coming on and the effect it's going to have on his performance or decisionmaking and ought to build in some kind of a mechanism or some kind of a process, ongoing, so that there's someone else around that he can talk to or will give him some kind of guidelines or tell him he's going the wrong way, or give him some escapes, say "slow down," or do something of that kind, because a police chief, like almost anyone else in the hierarchy when there's only one of them, has no peers in that hierarchy. He has no one to talk to. There's always someone above him or someone below him, and I think it's a very important thing that a police administrator ought to understand, because the easiest way, the least stressful way to be a police administrator, a police leader, is to do nothing and just go along with everybody.

One of the problems and one of the things I learned in relationship to stress with police officers and trying to encourage the best in the officers under you was that the officers who did the best job, who related so well to the community and became so totally involved, were those who came under so much stress because they were carrying so many other people's loads that they really had a high risk of mental health problems. With all the rest of the stresses, the unusual hours, and the image problems, and all the rest of it, to be able to be a good social worker, and that's what a good cop is, and to really do it well, you really carry a lot of loads, and one has to plan for that and understand it. There also has to be an acceptance in police departments that mental health problems are health problems, and that many of them can be cured and prevented.

Evaluation of performance in the department, well, we've said enough about that. I think everything has been said that needs to be said about the performance evaluations.

I'd like to raise a question about how you determine whether or not a police department is successful. We talked a lot about crime rates, but I've already told you what I think about crime rates or measurement of them. A police department can make some impact on some crimes to some extent, but that is generally short-lived, and they have to be very special in order to do that. My notion is that a police department is successful if the community in which it serves thinks it's successful. I think if the people in a city think their police department is successful, that department is probably doing the right kind of things and delivering service in the way it ought to. Of course, the caveat and the warning in that is that one must listen to all parts of the community and not just part of it.

I'd like to make just a comment on Dr. Reiser's comments on differences or contradictions between paramilitary organizations and participatory management, for example, and how that creates problems. I think maybe it doesn't need to if there's a clear distinction made about how policy is arrived at and how the organization runs. I think it's quite possible for the entire department on a peer basis to make policy and, as far as you can, to wipe out the differences in rank in making that policy in a participatory way. I think you can do that and still function as an organization where some people take orders from others. All they're doing there is implementing the policy of everybody else. I think there's a difference between policymaking and policy implementation.

Those are just a few comments. I look forward to the discussion.

MR. SAFFOLD. Excuse me. I'm not really sure what the procedure is going to be from this point on, but there have been so many comments, I'm wondering, do we at some point get a chance to respond to each other or do you have specific questions?

COMMISSIONER SALTZMAN. I'm going to suggest that right now, Mr. Saffold, you have the opportunity to make any response you'd like.

MR. SAFFOLD. I've just heard so much, it's no wonder we have so many of the problems that we have now. Not to discredit any of the things that have been said, but add a little substance to some of the considerations, first of all, I'd like to go back to a basic allegation, if you will, or issue that was raised in the very beginning.

We were talking about protecting people's rights and whether or not the police in fact were functioning properly in the citizens' behalf. It sounded as if—I may be wrong—but it sounded as if we kind of explained away a very significant segment of the community as being black, Latino, and rural people who migrated. Some people call them Appalachians and other things. Policemen have some terrific jargon for them. Are we saying in effect that we expect over a period of time that police officers are eventually going to adjust to people irrespective of their upbringing and the police officer's upbringing and at some point he's going to have a sociological transformation mentally about these people and, therefore, will then have an adequate service in black and Latino areas and rural areas, like it is in white areas, or are we in fact saying that this is a job a police officer is hired to do?

There is no mystique about whether or not you're rendering adequate services to a given people. Let me give you some for-instances. When I first came through the training academy in 1965, they used to threaten young white officers with being assigned to black areas if they didn't keep their grades up to a certain level, knowing perfectly well in the beginning that most of them were going to end up there anyway because they already had as many white officers as they needed in white areas.

We used to have sensitivity sessions where white and black officers would discuss problems, and somebody would accidentally say "nigger," or somebody would accidentally say "honky"; and it would turn into a very heated sensitivity session that never really came out with any substance. So, our organization put together a training seminar over at the University of Chicago Center for Continuing Education. We tried to pick a neutral ground so the white officers wouldn't feel intimidated about coming. We contacted all of the heads of all of the police associations in Chicago, and you've got the Irish and the Polish and the Italians—for some reason the Afro-Americans kind of seemed divisive to them.

But in any event, we invited the chief of police and all of his 70 underlings, and we set it up so that only white officers would participate so that they wouldn't have apprehensions about voicing their opinions about what was going on and, "Why was it that I was being attacked by these people who never saw me before just because I had on a uniform?"

Well, let me just give you an example about a young recruit. A young white officer, who had just attained a degree in sociology and decided to come into the field of policing, came to that first session with a genuine interest in trying to figure out why people were so

hostile towards him when they'd never met him as a person. He pretty much dominated that entire session during that day. They were set up in four segments. The first one was to be a panel of community representatives so that they could interact with the police officer about what their concerns were. The next panel was to be both prosecuting and defense attorneys that had to deal with the "high-crime" defendants as well as the police officer who's accused of not preparing his case properly for prosecution, and it frustrates him because he lost the case and some other things. A third panel was to be made up of news media people who reported the news in terms of how it affected the black community as well as the white community. We had editorial staff from all of the boards. At any rate, I'm trying to give you a round picture of what was involved there.

That young white officer came to the second session, and he wouldn't even come in the room. He stood in the back of the room. You're very true about peer pressure, but it works to the advantage, depending on who's trying to implement the pressure. He wouldn't come in the room. He said that when he got back to work he was assigned to a predominately black area. Because of the paramilitary structure, the first person that came to him was an immediate supervisor, the sergeant. He said, "Whose side are you on; what are you doing going to those militant meetings? Don't you understand who your friends are?" Next came his lieutenant, "Do you intend to make this job a career?" Then right on up to his watch commander, the captain, and then the real pressure, the real peer pressure, set in. The pressure that when he's assigned to work a car in a black community during the dark hours, if he puts in a call of distress and he's been labeled as "a nigger lover or a porkchop lover or anti-us, against us instead of the community," and etc., he all of a sudden can't count on anybody to respond to that call.

Then came the external peer activity. He wasn't being invited to any more social hours, and you've all said that police officers are very clannish. They spend time with other police officers and other police officers' wives, and when you're not invited to the social hour, when you can't drink with the boys after you get off work, and you can't count on the car to respond in a given situation when you need help, you have a reluctance to take a position of speaking out against inadequacies and injustices that we all know exist.

Why would you suggest studying the behavior of an individual over a long period of time? Let me give you an example of a 5-year veteran, just so you will just get some feel of what we're talking about. Here's a young white officer working in a predominately black area, who 5 years in this work—and you're all very correct that this is very stressful, stressful in many ways, but if you come in with a built-in prejudice towards a certain group of people, it gets much more frustrating. I agree with you. You wonder what you're doing over there.

This young officer, and I'm going to give you the span of an 8-hour day in 5 minutes for this young officer, if I can just take the time. I figure I'm getting equal time from this Commission. This young man started out working in a car, and I can use myself because it was me, and it's just a personal experience that you might want to address as psychiatrists and sociologists and others. He gets a call of a woman with a gun and immediately he activates all of the emergency equipment on the vehicle, and he's running red lights and jumping curves and frightening me half to death. When he finally gets there, as many of those calls are, it was not bona fide, and I asked the young officer—and we're working in a predominately black area—"Why were you in such a hurry to get there about that type of a call?" He said, "Well, it's our opinion that every gun that we get off the street will save a policeman's life and that's why I was rushing to that scene."

Now, as an experienced officer, that's not too far off. Okay, there's a lot of them that feel that way. About 2 hours later we get a call of a man shot. This time he stopped for red lights. He just took his time driving, and I mean it was like we had a half-hour or so to get there. When we got there the man was shot five times in the stomach, and he was getting robbed while he was loading his suitcase getting ready to take his family on a trip.

To make a long story short, we put him in a wagon to take him to the hospital and he didn't die. So now I asked the same young officer, a 5-year vet, "Why were you going so slow to that one?" He said, "Well, if he's already shot, what's the hurry?" Again, an attitude about the people we're serving.

And the real catcher was the end of the night. When you say that from 12 midnight to 8 o'clock in the morning are stressful hours, I agree with you. They're stressful for everybody. This particular incident was stressful for a man who came home at 5 o'clock from a job; he left home at 8 o'clock in the morning. His wife was mad. She was upset. My partner and I came in to answer a domestic, a very common call in the black community and the white community; depending on your attitude about the people you are handling, you may do the right thing and you may not, stressfully.

At any rate, this young officer got into a verbal altercation with the woman only because she was demanding that he take her husband to jail, and rather than take the time and explain to her like a seasoned officer would that that's not the only function that the police have, he ended up causing me to say to him, "Take it easy for a second. Let me talk to her."

He was so frustrated when that incident was over that we came out of that lady's house, and it was 6 o'clock in the morning and here's a young black kid with a shopping cart full of newspapers, and being an experienced police officer, you might assume he was delivering papers. Anyway, this guy was so frustrated with what had happened in that house and his inability to do—and we're going to get back to

evaluating and production, and whose purpose does it serve and how does it adversely affect a given community, because production is a key word in that evaluation, but let me finish this little incident here—he comes out of the house and he hollers at the kid, "Hey you, come here," and the kid humbles over there, and he says, "What are you doing out here?" He said, "I'm delivering papers." He said, "Make sure that's all you're doing."

So now we get back in the car and I ask him, "Why did you attack that youngster and frighten him half to death?" and I said, "I think it was because of what happened." He said, "I'm not afraid and I don't care whose attitude is what about what I do"—supervision.

We get back into the station. I bring it to the watch commander's attention. I said, "Maybe he needs another kind of assignment, I'm not sure, but I wish you would at least talk to him," and I reiterated what I just said to you.

Do you know what he said to me? He said, "You don't get paid to supervise nor train officers, and if you don't like the way he's conducting himself, find somebody else to work with." Well, that's frightening to me because over 80 percent of the police officers that work in predominately black and Latino and poor white areas are white, and if you're going to take a kind of tunnel vision towards that—you know, crime doesn't happen in a vacuum, and I agree with the chief of police who said that police officers can't stop crime. That's absolutely correct and we are limited in our ability to control it, but we can't even address that unless we have the working relationship of the community that we work in. The vast majority, believe it or not, of black people, Latino people, and poor white people are not involved in criminal activity, but they are reluctant to give us information; they are reluctant to cooperate with us; they are even reluctant to call us, because they're not sure what is going to happen when it all ends up.

I'll be glad to discuss any portion of what I'm saying, but while you're doing your studies, and while you're trying to evaluate performance and other things, don't overlook the fact that a police officer's job is one of employment. He may never change his social outlook, and it doesn't really make the community any different. I don't think black people care if members of the KKK are police officers in their particular community, if for that 8 hours that he's there he renders quality, adequate service. He can go and burn a sheet after he gets off, but what he does while he's there is important to them. I'm saying if you don't address the conduct of police officers during their duty hours, you're not going to ever realize citizen participation in the problem that you're trying to address.

Finally, let me just kind of address a couple of things of evaluating police performance. Maybe it varies from city to city. In the city of Chicago, it's very clear in every police officer's mind how he's going to be rated in terms of his supervisor—or her supervisor, thank goodness, as a result of a lawsuit. You know they actually hire women now?

Discrimination is the key. You don't have to worry about that, because if a black or Latino can't supervise a group of officers in a black or Latino area, where do they start to get the feel of the community, because in St. Louis, that example you just gave, St. Louis is horrible. They don't even have a mechanism for citizens to lodge a legitimate grievance against a police officer and expect redress.

We have a chapter now called St. Louis Ethical Police Society, all very concerned and dedicated police officers, who have been trying to implement a program that would allow citizen complaints to come to them and be referred to the responsible agency; but the police department is trying to kill it, and just to let you know that's not the example that we all want to follow unless they make a few minor adjustments in the process.

But in terms of evaluating performance and production, they want to know at the end of an 8-hour day, "How many traffic violations did you write?" for whatever reason. It might be that that's over $30 million in revenue a year for some other usefulness. I don't know. "How many physical arrests did you make? How many curfew violators did you get? How many school absentees did you get?" Now, that's a general method or measurement for production.

Then comes down the question of what do you mean by physical arrest. We believe that the quality of arrest has an awful lot to do with the police officer's inability to get a conviction in a courtroom. There is no reason in the world why an agency within a police department–like in Chicago they've got the special operations group (they used to call a task force), who operate from the premise that the number of arrests that you make today determines whether or not you're going to be rated well by your supervisor and whether or not you're going to get a good efficiency rating when it comes time for to be considered for a promotion. Now, they used to explain that to stop 100 cars for traffic violations, search every occupant in the car, irrespective of any kind of open suspicious action or whatever, just what area they were in, if you can turn up five guns a month doing that, the process is okay. I heard somebody earlier today say that we want to relax people's civil rights in order to reach some mythical goal of balancing arrests with reported crime.

It doesn't work that way. If you alienated 95 potential helpers trying to find five guns and then explain that treatment of the other 95 people away with "this is what we have to do to keep up production," you're hustling backwards.

Our organization did a study in Chicago in 1975 where we took 1,000 complaints from citizens, and we broke them down in terms of those that were involved in criminal activity and those that were just simple requests for service from police officers. We then broke them down in terms of age, occupational status, size of family, and etc. Over 50 percent of the people were not involved in any arrest situation or complaint about police abuse. Of the 50 percent that were in the ar-

rest category, in the part one offenses—murder, rape, robbery, burglary, aggravated assault—almost nil in terms of complaints. So it wasn't the criminal who was lodging complaints. We also found that the average age of the person was 29.5 years old, or 30 years old, head of a household, and had at least 2.7 children. That's a very stabilized element of the community. If you're alienating that element, where do you get your assistance from?

A young white officer working in a black community need not feel intimidated unless in fact he knows, and this is something you might want to address, what about the apathy and the indifference on the part of the vast majority of police officers who are not involved in any misconduct, but who in fact have said and they are not in a stressful situation? I think, in terms of danger and potential danger, the accidents in industry have taken more toll on citizens than the police job. But in terms of this particular individual officer whom I described earlier who wanted to address the problem and peer pressure caused him to become apathetic, I'm saying to you, ladies and gentlemen, apathy on the part of the vast majority of our counterparts, white officers, is causing the vast majority of the police officers, white and black, to suffer mistrust, noncooperation on the part of the citizens because they don't know what side we fall on, and supervision and production and evaluation by supervisors has promoted mediocrity to the extent that we have the tendency, our departments do, to protect rather than purge from within our midst those who are clearly brutes and in need of some kind of psychiatric treatment. You can check the records and see the same ones doing the shooting all the time, the same ones who make those arrests.

My suggestion to this particular is that while you're doing these evaluations and studies, consider why it is right now that citizens in general are so reluctant to admonish or punish or mete out punishment to police officers, why State's attorneys are so reluctant to prosecute police officers who go astray of the law, and why so few citizens, white citizens that is, are willing to come forward and try to put together community-based, citizen, independent, investigative agencies that are not politically controlled, or that are not controlled by the finances of municipal governments and not controlled by the normal traditional patronage and cronyism that now impedes the ability of the majority of police officers to do the job without having to feel like they're betraying the very institution that we're all sworn to uphold.

I thank you for that time.

COMMISSIONER SALTZMAN. We are now going to let the other panelists comment, but I just want to respond, if I may, personally, Mr. Saffold. This morning, well, towards this afternoon, after a couple of panelists had given us a rather bleak picture about the possibility for improvement in the area of our concern, the passion with which you speak and the feelings you bring to the task you have sworn to uphold and to pursue tells me that maybe there is some hope for us in specifi-

cally the area, that people can become passionate about the area like yourself. So, I thank you.

I would like to ask whether any of the other panelists would like to make any comments in any direction at this time.

DR. REISER. Just two quick things. One is that I think there is a problem in the police officer's role and within the police department and on the part of the community, and that is, is the police officer essentially functioning in an executive, decisionmaking capacity where he needs high-level kind of skills in dealing relatively autonomously in life-and-death and other important life situations, or is he a follower soldier who needs to be told what to do, closely supervised, etc.? I think that's a very serious problem that really hasn't been adequately looked at.

I know, in police departments that I'm familiar with, lipservice is given to the notion that the street officer is the backbone and the reason for being of the police agency, but in practice people get rewarded by being promoted out of patrol and wanting to get out of the street-level function because it's the bottom of the hierarchy and it's where the beginners and the other people who can't make it by promotion and so on remain.

The second point that I want to mention is kind of a topic I don't believe we've specifically talked about, and that is periodic psychological testing; does it have any value in police departments? I have two feelings about that. One is that the state of the art of psychological testing is rather abysmal from my way of looking at it. Most of the programs extant are really screening-out processes rather than true selection processes. We can, I think, manage to screen out people who are considered grossly unfit psychologically from police service, but we cannot yet really select in with any finesse those individuals who theoretically on some basis would be good for field police work and other police jobs.

On the other hand, I feel that we can, with emphasis in this area, develop some kind of testing and evaluation procedure that would make psychological evaluations as important and routine a part of evaluation as are annual or biannual medical exams, which most departments require of their police officers. I think that, given the nature of what we have been talking about here, the psychological variables are infinitely more urgent and important than the physical ones in many respects, and yet we really aren't addressing those issues on an ongoing basis.

COMMISSIONER SALTZMAN. Any other comments?

MR. POMEROY. I'd just like to make a general comment and that is, the number of subjects that are here on the agenda are so many and the issues are so broad and complex, I wouldn't know where to start to make additional comments. I would hope that maybe the Commission would have some questions and we could respond to your interests.

COMMISSIONER SALTZMAN. Fine. Why don't I start with Commissioner Ruiz. Do you have any questions?

COMMISSIONER RUIZ. Yes. Regarding what Mr. Saffold said about white officers in a black neighborhood, Dr. Strecher, in your comments you apparently never recommended the hiring of minorities as police officers. You emphasize that there were many cultures in large American cities. You noted in your study a white officer's emotional, cultural shock when he goes into a black neighborhood or an Hispanic, into an Hispanic area. To what extent have you noted a black officer's cultural shock if he goes into a black area?

DR. STRECHER. First of all, I appreciate your calling attention to the narrow-gauge aspects of that study because it was very specific at the time.

First of all, advocating the employment of really not just black police officers but of representatives of all population groups identifiable goes back well over a hundred years in this country. In old historic documents, you find, for instance, in your police department, Mr. Saffold, there was a custom in 1850 of having the police officers in every neighborhood of the ethnic or national origin of the people in that neighborhood, Germans, Irish, so forth and so on, and it was customary to do that. Racially, we have never caught up with that pattern as we did with the national groups. That's one of our problems. The advocacy of the hiring of population-group representatives is a very old thing in this country. We are just getting to it racially. We haven't done well with it.

Just as a point of interest, I served for 10 years on the Marquette Center for Minority Employment board of directors and advisors and have served as a technical assistant in getting agencies to hire black officers, Hispanic officers, and so forth, to represent the population.

COMMISSIONER RUIZ. If you were rewriting your book now 10 years afterwards, would you make such a recommendation now?

DR. STRECHER. Well, first of all, recommending hiring officers who—

COMMISSIONER RUIZ. For example, so as to eliminate culture shock?

DR. STRECHER. Well, there is culture shock for black officers working in white neighborhoods.

COMMISSIONER RUIZ. No. I'm talking about black officers who are working in black areas.

DR. STRECHER. I don't know. It's nothing I've ever studied.

COMMISSIONER RUIZ. You have never studied that?

DR. STRECHER. No, I haven't, and it's nothing I know very much about.

MR. SAFFOLD. Excuse me. I don't know what kind of study you've done on blacks working in white areas, but several of us, myself included, have worked in white areas. There was no shock. You just understood that you treated people like people and, if you did the things that some of the officers in black areas did, you wouldn't be there very long. There was no shock. You just adjusted to what the order of the

day was. You knew what it was, and there was no question in your mind of what you were to do.

DR. STRECHER. I think that's at variance with experience. I brought the first black police officers into St. Louis Police Academy as training officers. Their experience was that, first of all, they had not been used in white neighborhoods very much for many years and, when the process was initiated there, they did have difficulty in white neighborhoods, all-white neighborhoods.

MR. POMEROY. May I comment?

COMMISSIONER SALTZMAN. Yes, Mr. Pomeroy.

MR. POMEROY. I think it's important that when we're trying to do good things and we're trying to be sensitive to minority hiring, that we not go too far with our stereotyping. A black officer will not necessarily do well in a black neighborhood because he is black. Black officers come in all shapes and sizes the way everybody else does, any other ethnic group, and he may come from an upper-middle-class area and have the kind of a culture where he's not able to cope unless you give him the kind of skills with poor, socially deprived people if that's where he's working.

COMMISSIONER RUIZ. Mr. Pomeroy, is it your contention that a black officer would suffer culture shock if he was assigned—you were saying that there are good officers and bad officers no matter where they work. Is it your contention that a black officer would suffer culture shock if he were assigned to a black neighborhood?

MR. POMEROY. What I'm saying is I can't answer that question without knowing the neighborhood and the officer. I wasn't using good or bad. I was talking about having the proper skills and sensitivity. We just have to be careful not to stereotype too much.

DR. STRECHER. I'd like to add one thing. I was talking about poor black neighborhoods because one of the difficulties here, when I first presented this paper in '67, a Chicago black officer came to see me, and I asked him what he thought of the comments, and he said, "You know, I've never lived in a poor black neighborhood myself."

MR. SAFFOLD. Well, unfortunately you were exposed to an exception. Most of us came from poor neighborhoods. I'm not suggesting to you or anybody that black in and of itself is a panacea. If we had all black police officers in all-black areas and the same policies and procedures were allowed to be carried out, I daresay black folks would still have the same basic problems with inadequate police services and protection. However, we do believe that a reflection, an adequate reflection, of that particular segment of the community should be reflected within the employment sector, specifically the police sector; and in Chicago, they said that, "We didn't want to hire blacks just for the sake of hiring blacks because we don't want to cheat any whites that are more qualified than blacks," and we ended up having to prove that they had been systematically depriving blacks from the jobs, cheating them in promotions. I don't know what else to tell you other than it's racism. You just have to face it.

MR. POMEROY. I was not advocating all of those things or any of them. I was addressing a narrow point.

MR. SAFFOLD. I wasn't talking directly to you either.

COMMISSIONER SALTZMAN. I have to return the chair back to Chairman Flemming because the hour is getting late.

CHAIRMAN FLEMMING. Once again, we are in the middle of a very interesting discussion, but time has run out. We have endeavored to keep this consultation on schedule all the way through in fairness to everyone concerned. Certainly, again, some interesting issues have been raised. Some very interesting comments have been made. I was particularly interested, of course, in the comments that were made relative to citizen advisory groups, very helpful as far as our record is concerned. I've listened to the discussion on the studies that identified the stresses to which the police officer is subjected. I was wondering whether or not, recognizing, as a result of today's testimony, that some bridges need to be built between the law-abiding citizen and the police department, and I was wondering whether or not there had been studies that identified some of the stresses that developed in the life of the law-abiding citizen as that citizen relates to the police department. It seems to me that both sides need to be looked at.

All of you who have been on this panel have been very helpful to us as we come to grips with what Commissioner Freeman said near the end of the morning, what we recognize to be a very complex issue, and we think it is very, very important to try to come to grips with it at this time for the reasons that I set forth in my opening statement this morning.

The consultation will resume tomorrow morning promptly at 9 o'clock. Thank you all.

Wednesday Session, December 13, 1978

CHAIRMAN FLEMMING. I will ask the consultation to come to order.

May I request the members of the panel to join us here on the platform, please? I am requesting my colleague, Commissioner Freeman, to preside during this first panel on "departmental sanctions governing police performance."

Commissioner Freeman.

DEPARTMENTAL SANCTIONS GOVERNING POLICE PERFORMANCE

COMMISSIONER FREEMAN. Good morning, gentlemen. We are pleased that you have taken the time to join us this morning. You will be introduced in order.

The first panelist is Glen D. King. Mr. King is the executive director of the International Association of Chiefs of Police. He began his career in law enforcement as a police officer with the Dallas Police Department in 1948 and retired from the department as assistant chief of police in 1969. He worked with the IACP as a consultant in 1969 and in 1970 became the director of the public affairs division. He became the executive director in 1975.

The IACP recently published *Managing for Effective Police Discipline*, which is based on the study of the disciplinary procedures of 17 police departments around the country. Mr. King.

STATEMENT OF GLEN D. KING, EXECUTIVE DIRECTOR, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

MR. KING. Thank you. Mr. Chairman, members of the Commission, ladies, and gentlemen, it is a pleasure for me to appear here on behalf of the International Association of Chiefs of Police to discuss departmental sanctions governing police performance. I think a very brief comment about the nature of the association might be relevant and will provide a framework within which my comments will be made.

The IACP is a membership organization of police administrators. We have existed since 1893. We currently have 11,500 members in the association from 64 countries. We are involved in the administrative activities primarily of police agencies, and the primary mission of the association is to improve the quality of law enforcement through the improvement of administrative abilities and administrative skills.

To accomplish in one specific regard that mission, we went some 3 or 4 years ago to the Law Enforcement Assistance Administration and obtained a grant to do a study of police discipline across the United States. I think that study and the results of it and what we're doing as a result of that is directly relevant to what we're talking about today because I believe that simple translation of the departmental sanctions governing the police department gets you into the area of police discipline, because it is in the area of discipline that these sanctions are exercised.

The first premise that we established in the study on discipline was that there are obviously in law enforcement two specific types of discipline that take place. One is the positive discipline that comes from the establishment within the department of adequate policy statements, adequate rules and regulations, adequate guidelines for the performance, for the guidance of the police officer and performance of his duty. Without these statements on the part of administration, no adequate guide exists for the officer and no ability is given to him to determine what acts are permissible, what acts are required, and what acts are prohibited. So a major part of the study that we conducted was the establishment of the guidelines and the establishment of policies in different areas that would guide the police administrator, and then subsequently his subordinates, in the establishment of discipline.

Obviously, if the first effort, the effort at positive discipline within a department, is totally successful, there's never any necessity for any other activity on the part of the administrator; but experience and knowledge of human nature tells us this will not always be successful. So there must exist also within the department the negative aspects of discipline where sanctions are exercised against those officers who fail to comply, in those instances where there is not conformance with the established rules and regulations and policies of the department. In law enforcement, those sanctions go all the way from a verbal reprimand through written reprimands, disciplinary transfers, demotions, loss of pay or privileges, to suspension, and the ultimate punishment within a department is termination or separation from the service.

Generally speaking, in law enforcement now, the disciplinary process as it affects negative discipline has a variety of options available to the departmental administrator and to others who are directly affected by the actions taken by the department. The ultimate goal is to provide service to the public. So the protection of the public is one of the major concerns in the exercise of the disciplinary process within departments.

The officer also has rights that must be protected, and procedures that are followed in the department, and then outside of the department if the disciplinary ruling or the disciplinary action is appealed, must provide for him the protections that he has under the law. Many departments now have established, to assist the chief in determining the exact circumstance of any incident that may be reported or may come to the departmental attention in any way, an internal investigation unit or an internal affairs unit. Usually, more experienced investigators, who have shown specific competence, are assigned to that function, frequently reporting directly to the police chief or to one of his assistant chiefs within the department. They have the responsibility for originating investigations themselves, accepting complaints from within the department or complaints from outside the department, conducting the investigation, and reporting to the chief.

Many departments now have then established a disciplinary review board that will study the findings of the internal affairs unit, report those findings to the police chief, and advise him on the action that he takes. After the police chief then takes the disciplinary action that he thinks appropriate, given the conditions that exist, there is a right of review to the officer, usually in the civil service commission. In those cities which have civil service, there is a review there. There is then a review available to the city administrator or to the State or county administrator, however the nature of the organization may be. After the review by the administrator, there is then a recourse to the courts.

This same procedure is available to the complainant also who makes a complaint to the police department regarding specific police action. If he is not satisfied with the action taken by the police chief, if he thinks it's not consistent with the facts that exist, he has the right then to make his appeal also on the basis of a complaint to the civil service commission, and they will study it. He has the right to go to the city manager or the mayor, whoever the chief administrative officer of the jurisdiction is. He has then the right to go to court, either in a civil capacity or in a criminal with a criminal charge if he believes the action of the officer warrants it.

So, these are very briefly and very generally the processes within police agencies by which the sanctions are usually applied.

The nature of the organization itself is a factor involved in determining what the exact procedure will be, and for that reason, we have developed the discipline guide, which we are urging police agencies around this country and in other countries to adopt because we believe it gives a formalized, structured, systematized approach to the disciplinary process which will provide to the citizen who has a complaint, or to the citizen who does not have a complaint, adequate protections under the law and will provide for the officer at the same time the needed protection that he has in the performance of his tasks.

Those are my general comments.

COMMISSIONER FREEMAN. Thank you very much.

Our next panelist is Joseph D. McNamara. Chief McNamara took office as the chief of police in San Jose, California, on October 17, 1976. He began his law enforcement career 22 years ago on a foot beat in Harlem. He left the New York Police Department November 1, 1973, to become chief of police in Kansas City, Missouri.

Chief McNamara holds a B.S. in police science from John Jay College and a doctorate in public administration from Harvard. He has appeared on "Meet the Press," the "Today Show," and "The Advocates," articulating his view that police personal contact with citizens can be used to educate the public on the necessity of reporting crime, serving as witnesses, and taking common sense precautions against being victimized.

In 1974 Chief McNamara was the only police official included by *Time* magazine in a list of 200 young American leaders noted for their social impact. He has published numerous articles dealing with several facets of policing and crime prevention. Chief McNamara.

STATEMENT OF JOSEPH D. McNAMARA, CHIEF, SAN JOSE POLICE DEPARTMENT

CHIEF MCNAMARA. Thank you, Commissioners. I welcome the opportunity to meet with you today.

I would like to say in the beginning that Glen King mentioned the recent IACP publication regarding police discipline, and I am familiar with that document and I think it's safe to say that that will provide a very positive influence in American policing. It is an excellent and comprehensive work which will become quite effective as it becomes more widely known in the police world.

What I would like to do this morning is to share with you some of my experiences in a different dimension, experiences during the past 5 years as a major-city police chief in two different police departments regarding the importance of a fair and impartial system of police discipline to both the police agency and to the community.

When I became chief in Kansas City in 1973, I think it's fair to say that there was a tension between the predominant and minority community, the black community being predominant as a minority community of some 25 percent of the citizens of the city. And there was some lack of credibility; there was some hostility toward the police. But during the course of 3 years working very closely with community leaders and employing a number of administrative changes, we found that the NAACP, the Southern Christian Leadership Conference, and, indeed, even the ACLU actually supported the police department's budget requests for pay raises and for additional personnel. So I think it's an important example of what can occur once credibility and rapport are established.

One of the first things that is essential for any police administrator to do is to establish that credibility with the community and to pledge

on the part of the police administration that all citizen complaints will be fairly and objectively investigated, that the system is open to public inspection, and that appropriate discipline will be taken where officers are found guilty. That is the first step.

In San Jose a little over 2 years ago, the difference primarily was that the minority community, the predominant minority community, in San Jose is Hispanic. I was greeted with demands for a citizen review board, for transfer of certain patrol officers, and other signs of great lack of credibility on the part of some fraternities who had represented citizens against police officers, charging abuse of authority and excessive force. Today, the number of complaints against officers in San Jose has dropped in half. We have not had a questionable shooting in 2 years. The self-initiated, internally initiated actions by supervisors have increased by 30 percent; and once again, the minority community spokesmen are the strongest supporters of the police agency.

I think it's important for me to point out some of the changes that made possible that kind of improved credibility. As I mentioned, the first step was to show the sincere desire to communicate with the minority community leaders. In San Jose one of the initial concerns raised by a group of attorneys that met with me was that the citizens feared to come into the police building to register complaints because they were greeted by uniformed officers who, of course, were armed, and they were required to obtain security passes and that this acted as a deterrent to some citizens with legitimate complaints. They also strongly stated that it was their belief and the community belief that the internal affairs unit of the police department was a closed shop, policemen investigating policemen, and that it was a coverup operation.

Regardless of the accuracy of both statements, it seemed to me important to recognize those kinds of community concerns. So we moved the internal affairs unit out of police headquarters, and we hired one of the minority community leaders to work as a civilian in the internal affairs unit. His presence there was a clear demonstration on the part of the police agency that we had nothing to hide, that we viewed the process as fair and one that would withstand public scrutiny. In addition to that, there were some cases where discipline was imposed, and these and a number of other actions—affirmative action plans, transfer and career programs for minority officers—were also very positively received by the community.

I think it's an essential point to remember that no system of police discipline is effective unless it has the commitment of the rank and file police officers. Attempting to impose control on the police through oppressive methods is doomed to failure, and it is the role of police management to establish the climate by which officers adopt voluntarily a professional code of conduct which is accepted by the department rather than rejected.

I think we have been somewhat successful in both departments that I have been involved with in convincing police officers in our training program that, without the public support which comes with good credibility, we are not an effective police agency. In short, it's good business for a police department to increase its credibility because with that increased credibility comes cooperation from citizens in crime prevention and apprehension programs.

I think it is important, to the extent that it is possible, to achieve these changes through a low-keyed, cooperative role and only use adversary formulae where necessary. One of the agencies that has been very helpful in being a liaison between the community and the police in a nonadversary situation is an agency such as the National Conference of Christians and Jews. I think it is essential that we not talk down to the police officers, that we establish the fact that we think of them as professionals, and that we work from a positive point of view.

One last point that I would like to make, because I think it is an important one, is that the police chief who adopts these kinds of reforms is unfortunately more often than not a target of sometimes his own internal union, perhaps, or those groups in the department that have the ability to enlist support and to gather widespread news media attention in attacking the chief for a whole variety of reasons. I think it's fair to say that the recently completed LEAA study which showed that the average medium-sized-city police chief in the United States has a tenure of 2 years and 4 months establishes perhaps the fact that police chiefs may need to be covered under the Endangered Species Act by Congress.

Certainly, it seems to me that a chief who is apparently doing his job, trying to impose proper discipline and professional standards, should have some protection; but across the country, the rule more often than not is that a chief serves at the pleasure of the appointing authority without any tenure, without any established criteria for removal, and without even the right to a hearing. I think if we want good standards of policing, we need strong police administrators.

Today, with the increasing influence of the police labor movement, the balance of power has swung away from the chief. I think the police labor movement is a beneficial fact and, I think, one which we need to adjust to and work with; but the fact is that all unions, be they the Teamsters or the AFL or Auto Workers unions, will resist change and do have a competitive posture in regards to management, where we find across the country civil service commissions have the real power of discipline. For example, in San Jose they review all discipline above a written reprimand, and yet the chief is the one who is held responsible for the performance of the agency.

It seems clear that the chief needs some shield, some protection, if he is to effectively perform a job that at times will make him unpopular annd subject to those kinds of attacks. I would hope that the Com-

mission will address that question. I think the Commission can be tremendously useful to American police chiefs simply by making a strong statement that the chief's job is to control standards of policing and a good police chief who is attempting to do that needs widespread community support to be effective.

Thank you.

COMMISSIONER FREEMAN. Thank you.

Next we will hear from Lloyd G. Sealy.

Mr. Sealy is a professor in the Department of Law, Police Science, and Criminal Justice Administration at the John Jay College of Criminal Justice of the City University of New York. He is also the coordinator of the college's criminal justice education development program, one aspect of which is the coordination of curriculum research.

Mr. Sealy joined the New York City Police Department in 1942 as a patrolman. He subsequently worked with the department in several capacities, among them deputy inspector, where he was responsible for conducting disciplinary hearings and confidential investigations; assistant chief inspector, where he was responsible for integrity control; and coordinator of ethnic affairs, where he served as advisor to the police commissioner on departmental matters affecting various ethnic groups.

He is a frequent consultant, lecturer, and writer on police issues, especially police relations with minorities. He served as advisor to the President's Commission on Law Enforcement and the Administration of Justice. Mr. Sealy.

STATEMENT OF LLOYD G. SEALY, JOHN JAY COLLEGE OF CRIMINAL JUSTICE, CUNY

MR. SEALY. Thank you, Commissioners.

I think that some of my comments following Glen King and Chief McNamara may seem a little—I wouldn't use the word controversial, but certainly my perspective may be a little different.

You will certainly be very happy to know that IACP is taking a leadership role in making available to police administrators information on discipline and problems connected with it, and of course Chief McNamara is the example of the kind of police administrator that we who look at the profession of law enforcement see as the administrator of the future.

Police departments devise rules and procedures that are intended to facilitate the achievement of the identified roles of their agencies. Derelictions are dealt with by the imposition of penalties which may or may not have been clearly delineated. It should be noted that the rules and sanctions which govern police practices have been in most instances unilaterally determined by police management. The multitude of departmental regulations and the nature of the police job as-

sure rule violations. Pragmatically, this results in police management frequently ignoring breaches and invoking sanctions at its convenience. The sometimes arbitrary and capricious application of discipline results in a perception by police personnel that sanctions are invoked when the agency wants to get off the hook and needs someone to take the rap.

The ambivalence which police have of the purpose of discipline influences their attitude toward police management, as well as toward the public. There is an urgent need for police administrators to review the issues involved in sanctions, with input from police personnel.

The concern with an advocacy of civil rights by this Commission can contribute significantly towards redressing grievances of persons abused by the police. It is hoped that the Commission will include in its study current practices within law enforcement agencies relating to the civil rights of the police. This would mitigate the paranoia which exists among some law enforcement personnel that they have no rights and are second-class citizens.

Sanctions presuppose the existence of standards for measurement of performance. It is necessary that guidelines be established in most areas of police activities where the potential for civil rights violations is greatest.

Yesterday, in one of the panels there was a discussion of the use of discretion by police officers. I think that when we're talking about police and civil rights, we need to recognize that there is wide discretion which exists among the police in making decisions relating to many of their activities, and so the police administrator has a responsibility for developing written guidelines and communicating these guidelines throughout the police agency, as well as to the general public. These guidelines should include the area of enforcement priorities, the enforcement options that are available in certain kinds of situations to the police—agressive patrol, stop and frisk, interrogation, the handling of juveniles, family disputes, street encounters, demonstrations, and that rather all-encompassing category of disorderly conduct—because I think if we reflect on where the crunch between citizen and police actually occurs and where most complaints would arise about violation or abuse of citizens' rights on the part of police officers, we would find they would be in one of these activities of the police. It is incumbent, in my judgment, upon the police administrator to develop standards for performance in these areas and provide the police officer with a frame of reference so that he can make some assessments of the level of performance that is expected of him; and in turn, if the sanctions need to be invoked, again, everyone within the department and outside the department has some standard to make a judgment as to the appropriateness of the particular police conduct in a situation.

The other major area of civil rights abridgment relates to the use of deadly force. We are beginning to see in American policing the adoption of guidelines and firearm policies by some police departments,

and it is the thought here that these guidelines do not in fact restrict nor are they intended to restrict the police officer in protecting either his own life or the life of any citizen, but are to suggest to the police officer those kinds of circumstances under which firearms may be used; and the intention is to prevent the gross violation which occasionally occurs of the civil rights of the citizen through indiscriminate use of firearms by the police officer in circumstances where the use of a firearm is really not essential, either to protect the officer's life or to protect the life of any individual in the community.

New York City has adopted such firearm guidelines, and here are some of the directions which are issued to the police officers. One is, use all reasonable means before utilizing the firearm when effecting arrest or preventing or terminating a felony or defending self or another. Two, do not fire warning shots. Three, do not discharge firearms to summon assistance except when safety is in danger. Four, do not discharge firearm from or at moving vehicles unless occupants are using deadly physical force against officer or another by means other than vehicle. Five, do not discharge firearms on dogs or other animals unless there is no other way to bring the animal under control. Six, do not discharge firearms if innocent persons may be in danger.

I think that it's interesting to note that the number of situations in which civil rights of the individual have been grossly abused by use of deadly force by police are relatively few, and yet the impact which such an occurrence has on the police department and on the community where the incident occurs is one that has a lasting effect, to the detriment of effective law enforcement. I think that we have to recognize that this negative impact contributes to lawlessness; and, as persons concerned with law enforcement and with maintaining law and order in communities, any steps which can be taken to reduce the number of instances where these kinds of incidents occur certainly should be supported.

I think that the major concern in police administration has to be the implementation of sanctions in the organization, and by that I mean there has to be a total commitment on the part of the police administrator that the rules of the organization are going to be enforced in a fair and equitable manner. The integrity of the investigation that follows on any complaint of violation of civil rights has to be beyond reproach, and I disagree with Chief McNamara and some of the other panelists who offer as a mitigating circumstance for police administrators not following through on these kinds of complaints and investigations and maintaining discipline in the organization that there is a short tenure for the police chief.

It would seem to me that if police administrators are committed to professionalism, the fact that an incumbent chief has a relatively short term should in no way compromise the integrity of the disciplinary process because his successor presumably is committed to the same basic concept. It also appears to me that it's a copout on the part of

police administrators and managers to blame the police union for ineffective control over the performance of the police officers. Management of police departments, despite the increased influence of police unions, management of the police department is still within the control of the chief administrator of that department.

Glen King has indicated that the disciplinary process which is being recommended by IACP is quite detailed and very professional, and I agree with that 100 percent. I think that we have to recognize that it is not the procedures as written, but rather the way the implementation is carried out, and this relates to integrity. In many instances police managers, where investigations are being conducted into allegations of police misconduct, permit reports that are on their face acceptable and correct but, based out of police experience, are inadequate to go unchallenged. So long as that kind of a climate and an attitude prevails in the department, you are going to have problems because the kind of credibility which Chief McNamara has been able to achieve in his community is going to be lacking.

So, on the question of are sanctions within a department adequate to deal with police performance, my answer to that is yes, where there is a total commitment by the police administrator and where there is accountability throughout that organization so that the supervisors and the managers know that if they breach the integrity of the investigation, they are going to be personally held accountable under the circumstances.

I would just move on, since time is limited, to make the observation that when we deal with the issue of violation of civil rights, we have to recognize that, in some instances, communities contribute to the circumstances which make such violations possible. By that I mean where police officers are functioning in a climate in which they perceive that they are in enemy territory and where community people regard the police as being alien and being in fact "the enemy," you set up the kind of potential for confrontation that inevitably leads to clashes between police and community representatives; and, as a consequence, the self-fulfilling prophecy occurs. So I think that we have to approach this problem of civil rights abuse where it occurs by putting it in its proper perspective and recognizing that it occurs, fortunately not frequently, and that one of the ways that we can deal with it is with police and community working together.

If I have just a few more minutes, I'd close by making this observation. I would suggest that the Commission identify communities that have minority populations where the incidence of the use of deadly force by the police is infrequent. Research could be conducted to determine what factors exist in these situations which contribute to positive relationships between the police and the community. Such information could be shared with other areas where the problem is a major concern.

Professional associations in law enforcement have an obligation to assist in efforts to resolve these problems. The National Organization of Black Law Enforcement Executives will cooperate with the Commission to assure that the civil rights of all persons are protected. We hope that the International Association of Chiefs of Police, the National Black Police Association, and the International Conference of Police Associations will initiate organizational efforts in furtherance of the same objectives.

COMMISSIONER FREEMAN. Thank you, Mr. Sealy.

Next, Mr. Robert W. Klotz. Mr. Klotz is the deputy chief of the Metropolitan Police Department of Washington, D.C. He has been with the department for 23 years. As deputy chief, he is commanding officer of the special operations and traffic division, which has among its duties the handling of hostage and barricade situations and demonstrations and parade security. Also, as deputy chief he has been the commander of the department's personnel and training division.

He was formerly an inspector in the internal affairs division and, in addition, served for several years as the department's labor relations representative in contract negotiations and related labor-management areas. He is a frequent lecturer for the IACP and other organizations on labor relations and police discipline and has published several articles in those areas. Mr. Klotz.

STATEMENT OF ROBERT W. KLOTZ, DEPUTY CHIEF, METROPOLITAN POLICE OF WASHINGTON, D.C.

MR. KLOTZ. Thank you very much, Mr. Chairman and Commissioners.

We sort of scurried around it in some of the other talks, and I would like to get a little more specific right now, and what I'd like to talk about is one of the subtopics on the agenda, the policeman's bill of rights as it is most frequently termed.

About a year ago one of the major police unions in its official magazine had an article dealing with the policeman's bill of rights, which at that time was pending on Capitol Hill under H.R. 181. It has been introduced in Congress in the past four sessions. However, it has not yet been passed. The article opened on the scene of a police officer visiting the city and viewing a Magna Carta which was on display in the rotunda of the Capitol, and then it began to draw an analogy between this Magna Carta, the Bill of Rights, and the police officer's bill of rights and talked about giving to the officers the same rights that they are required to afford criminals.

Presently, a police officer's bill of rights exists in several states—Maryland, California, State of Washington, and Florida, notably. It also appears many times in labor relations contracts. I would like to take a few minutes to talk about the bill of rights from the view of a person who has commanded an internal affairs unit and has also dealt with the bill of rights at the collective bargaining table.

If you read the usual bill that you will see, it appears to be somewhat similar to the Boy Scout code of ethics. It wants everybody to be honorable and brave, don't do anything unreasonable, and it appears to be an attempt to ensure that the officer who is being investigated receives a modicum of decency by the people who are conducting the investigation. However, a closer reading of the bill of rights indicates, to me at least, and to others that I've talked to, that the bill is not so much concerned with criminal violations by officers because, since the Garretty rules and several others, the police officer who is under investigation for an alleged criminal offense is entitled to all of the rights and privileges of any other person, but is directed in the main at administrative investigations, not only by internal affairs divisions but, because of the broadness of the language, just about any type of minor discipline that an officer may become involved in.

What happens when you have this as a law or in a collective bargaining context, the ambiguity or the broadness of the language contained in most police officer's bills of rights will eventually be determined by either an arbitrator, a labor board, and in the case of a law, by a court of law. What it attacks is the ability of the chief of police to maintain the internal security of the police department through its investigative process.

The bill normally begins with an opening statement along the lines that, "Whenever an officer is under investigation or subject to questioning by a law enforcement agency for any reason which could lead to disciplinary action, demotion, dismissal, the investigation will be handled as follows—" and this opening paragraph will set the tone for the rest of the rules which follow after it. It's interesting to note that it covers investigation or subject to questioning by any law enforcement agency, which tends to include other, Federal law enforcement agencies in addition to the officer's own department. It uses the words "could lead" as opposed to "will lead," a knowledgeable type of situation. By "disciplinary action," it takes it from the realm of a serious investigation to just about any type of discipline, no matter how minor.

It then goes forth and sets out a system of rules. "The investigation will be handled at reasonable hours." What is reasonable to me is not necessarily reasonable to you. "The officer can only be questioned either at the office of the individual conducting the investigation or the office where the officer is assigned." That, in effect, is a limiting, controlling document that restricts you to interviewing an officer in two locations. As an individual who has conducted a massive internal investigation in police corruption, I can assure you that, when you walk into the office of the internal affairs division, it's the kiss of death in most police departments. The information about people going in and out of the office travels more rapidly than any telegraph that I can think of. In the course of our investigation we interviewed people in motels, automobiles, anyplace that's necessary to maintain the security of the investigation.

"The officer will be given the name of the person conducting the investigation and everyone else who is present." Another rule is, "No complaint alleging brutality shall be investigated unless it is sworn and notarized." It's interesting to note that they don't say you can't question the officer. It says you can't even begin an investigation alleging brutality unless you have a sworn and notarized complaint. What, in effect, this does is preclude you from receiving anonymous complaints or third-party complaints.

It says that, "The officer shall be advised in writing of the nature of the investigation and the names of all the witnesses before he is questioned." Now, I am not a lawyer, obviously, but I don't know that we are required to give that information to criminals when we arrest them for criminal violations, and I can see some real difficulties inherent in giving an officer under investigation the names and addresses of the witnesses who are going to appear against him.

Another provision deals with the fact that, "The officer shall not be threatened, transfered, or disciplined, or promised a reward or special consideration." Again, these are limiting factors. Many times during internal investigations, about your only hope of proceeding in some areas is to be able through the promise of some type of immunity have an officer testify for the department.

There has to be a complete record of the interview and the officer gets a copy of that. For internal investigations, that might not be bad, but when you go back to the broad introductory paragraph, you're talking about just about anytime a police official will be questioning an officer for discipline, no matter how minor.

The other little twist they have is that, "When an officer is questioned, he should have the right to be represented by counsel or a representative either of the union or of his choosing." Now, throughout this country where this has been tested in matters solely administrative, courts have unanimously held that officers when questioned in administrative matters do not have the right to have anyone in the room with them in the form of counsel or representation. This would give them a right which now does not exist.

There is also a prohibition against using a polygraph or other type of test, and if the officer refuses, you cannot impose any disciplinary action on him for his refusal. Similarly, in courts where this has been tested, the chief administrator's right to discipline for refusal to take tests has been upheld by the courts.

I don't want to appear too negative, although I probably have, on the policeman's bill of rights. There are parts of the bill of rights that are no more than decency or adequate treatment. My problem with the bill of rights is the broadness of the language, the ambiguity that exists, and the fact that if you're dealing with it as a law or in a collective bargaining context, the chief administrator's judgment is going to be second-guessed, if you will, either by a judge or arbitrator at some later point in time, and that before these types of bills appear any

further as laws, people should be aware of the police administrator's views or the difficulties that these type of things can cause for him, and at least a reasonable, intelligent judgment can be made as to whether the bill is an acceptable means to afford the officers the rights they feel they deserve.

One last thing in what Mr. Sealy talked about regarding police chiefs. I do travel the country. I deal in the labor area quite a bit, talk to chiefs from other departments, both in lecture settings and formal settings, and look at contracts, and it is not a copout. I can show you contracts that exist in this city, in this country, that were negotiated without the chief of police even being allowed to participate in the process, where he doesn't have to come to work because he can no longer unilaterally decide to do anything. It has to be done with the concurrence of the union, which were management prerogatives that were given away at the collective bargaining table in the mistaken belief that they were going to save 2 percent on a pay raise or some other fringe benefit. So there is a problem for chiefs of police in the collective bargaining area because there is a slow winnowing of the management prerogatives that gives him the right to deal not only in the area of internal security, but in any other facet of the chief's job.

Thank you very much.

COMMISSIONER FREEMAN. Thank you, Mr. Klotz.

Robert D. Gordon. Mr. Gordon is the secretary-treasurer of the International Conference of Police Associations. He came to the ICPA after 11 years' experience as a detective with the Freeport Police Department. During those years he served as director of the department's juvenile aid bureau and was a member of the community relations bureau. He has held executive offices, including the presidency of the Freeport Police Benevolent Association. He also served on that organization's contract-negotiating committee for several years. Mr. Gordon has lobbied extensively at the State and Federal levels for legislation providing benefits to police officers. Mr. Gordon.

STATEMENT OF ROBERT D. GORDON, SECRETARY-TREASURER, INTERNATIONAL CONFERENCE OF POLICE ASSOCIATIONS

MR. GORDON. Thank you, Commissioner.

Normally, in the time allotted I would not come with prepared text, but after having sat in the audience yesterday and listening to some of the previous speakers, I might tell you I was quite disturbed and alarmed at some of the things that I heard up on this podium. I therefore went back to my office last night and left there probably 8 o'clock after putting down some of my thoughts on paper, so if you will bear with me.

First, I'd like to state that I appreciate the opportunity to present the views of the Nation's line officers with reference to the most complex subject regarding civil rights of the citizens of this country and

to address myself to the question before us, namely, departmental sanctions governing police.

After sitting in the audience yesterday, I've come to the conclusion that my remarks will no doubt be viewed as filing a minority report on this consultation. While I readily confess my credentials may not be as impressive as my former and present fellow panelists, I believe I possess credentials in the area we are addressing today, after having spent some 27 years in law enforcement next January 2 in the areas mainly of disciplining police officers who are charged with violation of civil rights.

I listened intently yesterday to several speakers who have made statements ranging from condemnation of law enforcement officers in general, coupled with several horror stories of how people had their rights violated, up to a partial blast at the Department of Justice who allegedly failed to act on some 56 pending civil rights cases. I heard no one here yesterday mention that perhaps those 56 cases did or do not warrant any action. Yet, it would be indeed interesting to learn if the officers in those cases have been suspended, demoted, or even fired while their cases were pending; and I might add, as chiefs in many parts of this country, without redress or support from management.

Apparently a large segment of our society is not aware that our nation's law enforcement officers today now view themselves as our nation's newest minority, whereby we are constantly under the scrutiny of the Department of Justice, and in some cases justifiably so, the FBI, State and private agencies, civil rights groups, commissions, review boards, coupled with the general public and elected officials as well. We have been and are presently being tested and retested. We have been undergoing affirmative action programs and many other new programs. Standards in police training have raised indeed over the past 10 years, and they now appear to be on the decline because of funding. Not too long ago we all heard the cry was to recruit men and women with college degrees, hire the best for law enforcement professions because Uncle Sam was paying the tab for these programs. Just recently the department across the Potomac has been brought into the Federal court by the Federal Government, who is now challenging the requirement that a recruit must possess a college degree before he or she can enter the police department.

Much was said yesterday regarding selection and training, regulation of police practices, and monitoring police performance; and, I might add, I was jumping up and down in my seat. I would have loved to have been sitting on this panel or all three panels.

If the average citizen entered this auditorium yesterday, I'm sure she or he would leave with the impression that there is a tidal wave of civil rights violations upon us being perpetrated by our nation's law enforcement officers. Contrary to the remarks made yesterday by Professor Takagi of the horrible "police union movement" who was success-

ful in defeating a bad ordinance, a gun ordinance, in the city of Seattle—I might add at this time that I was very happy to participate in that ordinance because I testified on that case—I would have to respond to him that those officers who belong to that horrible union have the same right to be represented and their views presented as do the League of Cities, the U.S. Conference of Mayors, the International Association of Chiefs of Police, the American Bar Association, the AMA, and the educational groups that no doubt Professor Takagi belongs to and to their respective associations. As a matter of fact, the American Bar Association has a great input as to the selection of local, State, and Federal judges. Police officers are not afforded that position.

I have serious doubts that the situation regarding violation of civil rights by police officers is a severe as many would have us believe. We have become a nation virtually aware and protective of not only our citizens' rights, but those of other nations as well. I am sure that if an indepth study were conducted, on a 24-hour-a-day basis, we would find that there are literally millions of calls for assistance from citizens that are received and investigated by our nation's law enforcement officers from the public, coupled with the thousands upon thousands of routine arrests that are made yearly—I might add, without incident or complaints of brutality or accusation. I think this study would indeed justify my theory.

There was even a statement made by Dean Myren yesterday that police officers should wait perhaps longer before they use their weapon. Unfortunately, over 1,450 police officers who gave their lives in the past 10 years were not afforded that same treatment by their assailants. Assaults upon police officers, court personnel, prison guards, and other law enforcement agencies have increased tenfold; and I can no doubt match horror story for horror story with the previous speakers that were on this podium yesterday, for I have visited young police officers in intensive-care units who have been shot, stabbed, maimed, limbs broken, and several instances where they had lye thrown in their face and are blind for life or the officers who have been jumped by groups of thugs only to see the citizens cheering for the thugs.

Neither I nor my union nor the great majority of law enforcement officers condone brutality or anyone's civil rights being violated. And we, along with management, attempt to weed out those persons. I must say, however, in the same vein, neither do we condone assaults upon police officers by anyone or any group who all too often walk out free under the guise of being a member of a minority group, claiming their rights were being violated.

What we are now witnessing is that many of our members are seeking redress through the courts by filing lawsuits against citizens who assault them or accuse the officer of brutality, and we have found that numerous courts have ruled in favor of our officers. Heretofore, many officers have lost their jobs and have never been able to obtain em-

ployment because of these false charges, because they neither had the funds nor the support to defend these charges.

We as servants of the public are sworn to uphold the rights of everyone and are required by law to read these rights to a person who is arrested. Yet, we are denied these same rights ourselves. As Chief Klotz stated here before, we have been constantly seeking Federal legislation which would provide a nationwide police officer's bill of rights, and I'm happy to say I was one of the authors in drawing that bill up. Yet, ironically, I just read in the *Star* last night of the case where Chief DiGrazzia across the bridge has just been recently fired, and he has been vehemently opposed to that legislation for the past 8 or 9 years, and he is now affording himself the use of the bill of rights to get his job back. That's quite interesting. So it just isn't for patrolmen alone. It includes every law enforcement officer. We have presented this legislation to Members of Congress and numerous Members who oppose such a bill yet support Federal legislation for a bill of rights for prisoners.

May I say, Mr. Chairman, in conclusion, that no law enforcement agency can survive in any area, be it charged with brutality, corruption, or whatever, by handing out strict discipline to the cop on the street while at the management level little if any discipline is ever meted out. I find it very rare that any chiefs or captains are suspended or fired. As a union leader, I am disturbed at the ever-present attitude of the officer today who is adopting the attitude of "don't get involved," and I am sure that management that's sitting on the podium would concur. I can cite case after case where police officers are looking the other way, who do not want to get involved for fear of being accused of violating someone's rights. They are finding it easier to head in the other direction.

While the quality of preservation of civil rights and of police practices regarding civil rights is indeed a serious problem, our nation and our law enforcement officers are being confronted with far more serious problems with the increase in crime, assaults, and reduction in forces in our law enforcement agencies because of the present economy. We cannot allow our law enforcement agencies to become the whipping boy for society, nor can we constantly condemn police unions for obtaining better equipment, better training, and better salaries for all ranks, which management has failed miserably to do over the past 25 years—and I might add that that includes up to the rank of chief of police—and last but not least, obtaining legislation affecting our jobs, such as the bill of rights that the majority of the chiefs in the country are opposed to and yet they are utilizing this law in the several States that have adopted the bill of rights, namely, the States of Maryland, Virginia, California, Florida, and the State of Washington.

From some of the other things I heard here yesterday, I sincerely hope that these 2 days of discussion do not turn into a forum to retain

chiefs of police as some panelists have suggested, and they in turn are now utilizing the very law they oppose to protect their jobs. Chief Klotz read the proposed bill of rights, which is, as I stated, proposed legislation. There are many things that we probably could remove out of the present bill of rights that we have presented to Congress, and that is bargaining back and forth, which I'm sure will be changed numerous times before it does get passed, and I'm sure there are many things that we could agree with the chiefs' association.

But you must keep in mind what brought about unions of policemen in this country, and what brought about the request for a bill of rights, because our rights have been violated from the day I went on the police department where the chief was God-all-mighty. He hired, he fired, he transferred, he dismissed. If he didn't like the way you looked, you were out of a job. When you hear this malarkey that you've got a civil service job and the chief doesn't, that's not true. In my own department, we have a totally incompetent chief of police who they just tried to fire and they couldn't because of civil service protection. So, subsequently, our department is saddled with a man who goes out on the street and couldn't get himself arrested. So when we pass this thing around that chiefs are fired at the whim—maybe some of the large departments will, I'm sure. Glen King testified to the fact that a good number of the chiefs in this country do have tenure as chiefs.

Some of the reasons we asked for the bill of rights are the polygraph, where heretofore it has been used at the whim of the chief to weed out somebody he may not like. As I stated, he can transfer. And the internal affairs division—we have no qualms with the internal affairs division, but our problem is when we're brought in just at the whim of somebody who said that this officer threatened him, and you're threatened with transfers. We don't have any arguments with sergeants giving out directions to the officer on the street where discipline is involved. That's not the question here. The question here is when an officer is brought in, if we have to advise people of their rights we're sworn to uphold 8 hours a day, we believe our people should be entitled to the same rights.

What I'm saying is that we have become a nation that is really protective of everyone's rights. Don't leave our people out of the picture. Thank you.

COMMISSIONER FREEMAN. Thank you, Mr. Gordon.

We have heard five panelists. We have heard five presentations. We have certainly heard a range of opinions, and there may be the chance that some of you may not agree with what you have heard from another panelist. Now is a chance for either or all of you panelists to comment, question, or otherwise with respect to what you have heard, whether you agree, disagree, or whatever. There is no order, except if you wish to say something, move to your microphone and begin talking.

CHIEF MCNAMARA. I would like to start by saying that I certainly would agree with some of Mr. Gordon's comments. I have been in law enforcement for going on 23 years now, and only the last 5 of those years have I occupied the position as chief; and it is quite true that the police union movement has been a positive force in protecting officers from some arbitrary management, and I think to characterize my comments, at least, or as I understand the IACP and other organizations that I belong to, as being antiunion, I think is unfair.

There certainly is a debate, and there are valid points on both sides. For example, California has a police officer's bill of rights, and while I would agree with Chief Klotz's views that that law in California has in some ways impeded the investigation of charges of police officers' misconduct, on the other hand, I think California's law enforcement has for the most part a well-deserved reputation for integrity and professionalism; and, certainly in San Jose, our police department has not disintegrated under that rule, and, in fact, a good deal of progress has been made.

So I think it would be a mistake for this Commission to view some of the debate that's going on as a civil war. I don't think it's any more than what goes on in General Motors or Ford or the other corporations in the natural tension that exists between labor and management.

I am a little disturbed by Mr. Sealy's comments. He's my old boss, you know, and I hate to sound like I'm contradicting him; but I was not for one moment suggesting or condoning any copout or failure of the chief to do his duty because of the lack of tenure, and, frankly, it cuts two ways.

No one can deny what Mr. Gordon said, that if you moved into tenure, some incompetent people will also be protected by that—although I think we'd get quite different responses if we asked him about tenure for officers—but the fact of life is that I'm talking about preventive posture on the part of a chief, not waiting until some major civil rights violation apparently occurs before the chief moves in to take action. I think many of the administrative actions need to be taken in advance in a preventive mode, and most chiefs without tenure seriously think about rocking the boat, carefully awaiting their political stability in the city in which they work; and while we can all righteously denounce that, the fact of life is that it goes on in just about every organization that I'm aware of. The question that we raise is not to guarantee tenure for incompetents, but to at least establish some guidelines to protect a chief who should have the right to at least a public hearing to defend his administration.

MR. KING. I don't necessarily agree with everything that Mr. Gordon said, but there are a couple of points he raised that I think would bear some elaboration. You can challenge the figures if you want to, and they may be in some regard challenged. I talked not long ago with the Deputy Attorney General of the United States who stated that during 1977 he received approximately 15,000 complaints of a civil rights na-

ture involving police officers. He said that an examination of those complaints indicated that about 350 were worthy of some extensive investigation and, after investigation, about 35 were worthy of prosecution. I think this does support what Mr. Sealy had said also about it being numerically a relatively small problem.

We all know the fact that the numbers are small doesn't make the problem itself a small one. It's a major problem regardless of the fact that a limited number of these cases do occur, and we need to be working on them; but something that this highlights to me is the necessity for us being able to establish a reasonable procedure by which complaints can be made and can be investigated that give the citizen who feels aggrieved the vehicle by which his grievance can be brought to light and still provide adequate protection for the police officer himself.

A number of the cases that were filed were false on their face. A number of them were differences of opinion, and in a percentage of them, the officer was determined to be acting improperly, and it was appropriately filed in the court and he was dismissed or whatever. The sanctions were exercised.

I do not believe that every complaint that comes to the police department before it is investigated ought to be sworn to. I think the police department ought to investigate anonymous complaints. I think it ought to investigate third-party complaints, given the nature of the complaint itself. If someone calls the police department and says, "One of your officers is in a building over on K Street," I don't think you ought to have to have a sworn statement from that person with his name and address and his telephone number before you begin to investigate that complaint. You ought to investigate it immediately, and if you have persons who are not willing to give their name but who do have some information about broad-based activities within the department that are not defensible, then those ought to be looked into, not as a response to that complaint but simply as a response of the police chief responsible for the department to determine whether the operation of his department is correct or not. So I don't think in these areas there ought to be the necessity for a sworn complaint.

Complaints of the nature that we're talking about here this morning are a little bit different. They are not anonymous in their nature. You do not violate the rights except, really, on an individual basis. If you have broad-based programs that deprive segments of society, then that's one thing; but the kind of complaints we're talking about are individual in nature, and they allege specific action on the part of a police officer, usually as it affects a specific individual; and I do believe very strongly, as Mr. Gordon has indicated, that we do need to be able to establish some method by which these complaints that have some possible basis in fact are accepted and other complaints that are made deliberately, that are made as an harassment tactic, have some effect. Personally, I would like to see the police officer in cases of this nature

sworn, and I would like to see the complainant sworn, and then if there is any question about whether it's simple harassment, whether is a simple disagreement, or whether it's a different perspective—all of those things could be determined; but I would like to see both the police officer and the person who is making the complaint against him sworn. I would like to see some recourse on that basis on a very large number of specious complaints that occur.

MR. GORDON. If I may, I'd just like to respond to Chief McNamara. I guess the fellows in your area are quite fortunate that you do have collective bargaining when you stated that most of management does not look upon unions as the bad guys. We have some 13 States in this country that provide no collective bargaining whatsoever for police officers. In fact, we refer to many areas as collective begging. When I go down to the South, I have two things going against me. I talk funny and I come from the East. When you go into places like North Carolina, South Carolina, Georgia, or Alabama and Tennessee where chiefs of police tell these men who are looking for some redress—incidentally, when you stated before that most police officers like tenure, I can probably state that 50 percent of our nation's departments today where the rank and file have no tenure whatsoever. They are hired and fired at the whim of the chief; there is no such thing as civil service.

When you go down to these areas where these chiefs of police state, and they have done it, that if you form an association, you will be fired—we just had this take place in Prince Georges County, Maryland, where an officer went in to form an association with the deputy sheriffs, which finally wound up having the sheriff indicted for some of the things that were brought about by the association. I would say that out of those 13 States there are numerous chiefs of police and management that are vehemently opposed to seeing the police unions because the status quo is going to come up with the old cry that, "Well, there goes the department out the window." I guess today if you're affiliated with the labor movement, you're either a member of the organized crime or the communist party, and I can assure you that I am a member of neither.

To respond to what Mr. King just stated, that there were 15,000 complaints received by the Justice Department. I think if you do some fast addition you'll find that there are over 450,000 uniformed forces in this country of police officers; 15,000 complaints is what we added up to that were legitimate cases. It's unbelievable.

My good friend over here, Chief Sealy of the New York City Police Department, talked about tenure. I can remember not too long ago, and I'm sure you would concur, the New York City detectives sought tenure in their office at one time, and you never heard such a big uproar in your life on behalf of management in the New York City Police. They said no way on God's green earth were those detectives going to receive tenure. So it's just something, I think, that we could probably kick this thing around for hours.

We have found in places down in the South where officers have even been fired who received an injury on the job because they could no longer perform as a police officer. In Garrett County, North Carolina, we had a sheriff down there who was injured directing traffic. He broke his back and he was taken off the payroll. Down there they don't know what three-quarters of pay is or disability pay like they do in the East. Some of the conditions are just deplorable, and this is what I believe created this gigantic—as the professor said yesterday—horrible union movement; and I think one important thing to keep in mind is that the police union movement is here, and I can tell you it's here to stay; it's not going away.

But I think we have to start dealing with some of the problems. The chiefs have extended numerous invitations to my organization to participate on strike panels with the chiefs, discipline panels; and I've made the statement several times to Glen King and Glen Murphy that I go over at a chief's convention like a lead balloon because I have some of these oldtimers sitting out there from way back, 30 years with the police department, and they look at me and say, "If you come into my town, you're going to find yourself hanging from the first pole we can find," and I can read it.

But the young progressive chiefs that are coming up the ladder, and these young policemen today, are not buying that professionalism, that badge of professionalism that we've started to believe as a steady diet. In many parts of this country we are finding out that these professional police officers are getting $7,800 a year, and that chief sits there and sees metermaids and people on welfare receiving better salaries than police officers. Yet, we give them a weapon. We give them the authority to go out and do the dirty work that society doesn't want to deal with. And when he becomes involved, he is usually in most cases in the smaller cities, not in the larger ones, he is thrown to the wolves. And our union is going to stop it.

MR. SEALY. I just want to make the observation that we seem to be getting away from the theme of this consultation. I certainly would agree with Mr. Gordon that in many instances the treatment accorded to law enforcement officers in various departments is definitely not what it should be, but that certainly in no way relates to the problem and the concerns which we are here confronted with; and it would seem to me that if we are dealing with relatively a few numbers of instances of gross abuse of civil rights on the part of police officers, I again take the position, disagreeing with Chief Klotz, that even though I recognize that collective bargaining negotiation has impinged to some extent on what were formerly prerogatives of management exclusively, I still take the position that if you look at any community which has a well-managed, well-run police organization, there it will be less likely that you're going to be confronted with the kind of issue that we are concerned with here today.

The integrity of the investigative process as it relates to complaints against police officers must be maintained. It will only be maintained where you have a commitment from the top of the department which impacts coming down to middle management to the supervisory level. Without it, we are going to continue to be coming back to address ourselves to this particular issue.

The thing that really amazes me is that I have never met a police officer that condoned gross abuse of civil rights anywhere, and the fact is that the officers look for leadership to the chief and to the administrator of that department to help correct the deficiencies within the agency, and so I take the position that the reason we continue to have the problem is because we do not have the kind of administrative leadership that should exist in these organizations.

COMMISSIONER FREEMAN. We are going to use these last few minutes with questions and comments from the Commissioners. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Mr. King, you were commenting on discipline. In fact, a number of panelists did. Yet, we were told yesterday, in effect, that policies do not go from the top down, but really from the bottom up in the police department. Were you here yesterday when that statement was made?

MR. KING. No, I was not. I do know that the comment was made. I think that was in reference to a specific police agency that the person was talking about, and he said that there was not policy disseminating from the top coming down. It was created on the street, really.

The larger the department, obviously, the more I think this is likely to be true; and this doesn't have anything to do with relative competence of police administrators in large or small departments. If you have a department the size of the department of New York City, which has now an excellent police commissioner, the probability of his policies and his attitudes and his values being felt on the street are relatively remote. There are a large number of layers of administrative commands, supervisory levels between him and the street officer, and it is extremely difficult in large departments for the policies of the administrative head of the department to be felt at the operational level. As the departments become smaller, this becomes less of a problem.

So this is one of the problems of the larger police agency. It emphasizes, I think, the necessity for a well-developed, carefully enunciated set of rules and regulations, policies, and procedures governing the performance of the members of the department that can be disseminated and can be clearly understood and from which accountability can be created.

COMMISSIONER SALTZMAN. Most minorities occupy residences in the larger cities with the larger police departments. If there are abuses of the civil rights of minorities, I assume they occur in the larger cities with the larger police departments. Is there a process by which the policy from management can successfuly filter down rather than the policy of the department being determined from the bottom up?

MR. KING. I think there is. Again, I think the structuring of this and the creation of accountability at each level within the department and the administrative courage to insist that this be followed is the only procedure that can happen. I think the statement that policy is created at the street level is not necessarily true, and it does not have to be true; but the comment that I would make is to highlight the difficulty of it. I think, generally speaking, the policies of the department under which the disciplinary actions are taken are disseminated, are known to each member of the department, and the accountability can be and is generally created in that form.

COMMISSIONER SALTZMAN. Thank you, sir.

COMMISSIONER FREEMAN. Mr. Sealy, we have received a question from the audience that is to be directed to you. The question is, what approaches do you recommend for holding police officers accountable for the manner in which they exercise their discretion?

MR. SEALY. I think that, obviously, when we talk about exercising discretion, that is an indication that definitive guidelines for a variety of police activities cannot be developed. In other words, you cannot in the area of exercising discretion reduce to written guidelines all of the contingencies that a police officer may encounter in the course of his duty. But I suggest that the police management identify some of the more common activities that the police would be involved in and at least provide some general guidelines which could be used as a frame of reference or standard in making a judgment about the appropriateness and the effectiveness of police behavior in a particular situation because, without these guidelines, I think that the police officer now is placed in the position where he can be a Monday-morning quarterback, after the fact.

I think, to get to what Chief McNamara was referring to, when we're talking about trying to take preventive action or develop procedures in advance of incidents developing which will assist the police officers in performing their duties more effectively in accordance with the law, I would take the position that, even though you cannot reduce the guidelines so that they're going to cover all specific situations that the police will encounter, you will enable the officer to have a frame of reference to make judgments in particular kinds of situations, and where the judgment that has been exercised is not in conformity with the guidelines, you're now in a position to request an explanation as to why the officer has deviated from the guidelines and to make a judgment as to whether or not it was an appropriate circumstance for deviation from the guidelines.

COMMISSIONER FREEMAN. Commissioner Ruiz?

COMMISSIONER RUIZ. Mr. Gordon, as a union expert, I have a problem and maybe you might be able to straighten me out. Is this employer-employee relationship in private industry equatable with the employer-employee relationship in a police organization? For example, a police organization oftentimes is referred to as a paramilitary or-

ganization. Does the employer-employee relationship as you find unions at the bargaining table process which is used in private industry interfere with the efficiency requirement by centralized authority in a police department? And I'll add one more element here. If police strike during a riot, we have the public to consider. In those rules for bargaining, have you built in any restrictions or are there any prohibitions as to when police should not strike?

MR. GORDON. That's quite a complex question. First of all, you have to define a union in general compared to our police union. We are vehemently opposed, our union, against police officers striking. However, and that word always comes up, we don't believe that police officers should be put in that position that they must take some type of job action. We have, as I stated before, been seeking throughout this country a nationwide collective bargaining bill that would give our people the right to binding arbitration that would not go into a strike. In fact, I don't recall, Commissioner, any police officers going on strike during a riot. I think when the bugle is sounded, regardless of what is happening, those officers respond.

Out of the 32 strikes, I might add, that have taken place in this nation, only 4 of them of recent had no collective bargaining process whatsoever. So, when they say it's against the law for police officers to strike in lieu of a rule of any collective bargaining—of course, the moral responsibility, I guess, is there not to strike; at least, police officers have taken that position. If you're talking about similar to the Teamsters or dock workers, in no way do we profess to have our people on that same level, no, sir.

COMMISSIONER RUIZ. With relation to the activities in which you are engaged, there is no strike involved?

MR. GORDON. I think you are referring to a no-strike clause.

COMMISSIONER RUIZ. Yes.

MR. GORDON. Many management-level people have attacked that as just being in that contract as window dressing, but anytime we sign a contract with any of our associations, that is written in, that there will be no strike.

COMMISSIONER RUIZ. That is written in?

MR. GORDON. Yes, sir, in most of the contracts I've negotiated. There are the exceptions.

COMMISSIONER RUIZ. I have one more question. How can an officer's civil rights be protected if there are no rules or standards when an officer is permitted out in the field to set policy? I think rules of conduct are needed as a point of reference by the police officer to protect his own civil rights, and we have been talking about civil rights here. If an officer makes policy up in the field, how can he protect his civil rights when there is no point of reference? Can anyone answer that?

MR. KING. Number one, I do not agree that under any sort of normal circumstances the officers in the field set the policy. I think the policy is set by the department, and I think whether he conforms with

that policy, or whether he *de facto* sets his own policy in an individual incident is certainly a possibility; but most departments now do have written statements of policy, whether they are believed to be effectively felt at the street level, as he apparently was talking about in Chicago yesterday, or not. The Chicago Police Department does have a set of general orders for its department. It does have a set of general policies that are designed for the governance of the officers in the field. So he does not have the authority nor, appropriately, the ability to set his own policy.

The civil rights of the officer are not, honestly I think, very frequently violated. The structure that sets up the procedure of the department would remove him, I think, generally from any serious probability of his own civil rights being violated in the sense that we are using that term here and in the sense of the civil rights violation of the groups that we're talking about.

CHIEF MCNAMARA. Commissioner, I think that possibly we are somewhat confused between the definition of policy. Certainly, every member of the New York City Police Department is trained and is required to be knowledgeable about a very comprehensive set of rules, and I think that is true in just about every medium- and large-size American police department.

This historical fact is that those rules have not prevented civil rights violations, admittedly few. However, some of those few have plunged cities into riots and into civil disorders. Those few have caused a tremendous suspicion and hostility between the police and the minority community, and so it would be a great mistake to view the small number of violations as something not to be concerned about.

I think what we're talking about is a philosophy, a concept of the role of a police officer in a democratic society as a servant of the people who respects and is sensitive to the rights of every citizen in the city, and that is the essential philosophy that the chief has to communicate to the street police officers. It's far more important than the legalistic wording of rules and of firearms policies. Those rules and policies are, of course, essential; but, once again, there are first steps. The problems in American cities where police officers have often become involved in rather unimportant incidents—traffic stops, intoxicated-driving arrests, such as in Watts—are covered substantially by rules and by procedures, but until the police officers share a philosophy that human life is scared, that they are professionals, that their job requires professional standards, and until that police code of professionalism is perceived by the minority communities, we are going to go on having hostility and complaints.

One of the striking findings that I've experienced is that the more open and the more credibility the police complaint system has, the fewer complaints that come in from minority citizens and the less likelihood there is that the minority citizen will misperceive or resist the police officer's authority. So, once again, I think that it is good

business to open the lines of communication between the police and the minority community, not in the sense of management barking out orders and more general orders being promulgated throughout the agency, but in a more rank and file participatory management process, which has shown some signs of success.

COMMISSIONER FREEMAN. Gentlemen, our time has run out. This has been a very interesting discussion. I do express my appreciation to each of you for the presentation, and I will now turn the consultation back over to Chairman Flemming.

CHAIRMAN FLEMMING. Thank you.

I want to join Commissioner Freeman in expressing to each member of the panel our appreciation for your being here and the exchange that has taken place between the members of the panel. I think it has been very revealing and very helpful. Thank you very, very much.

If the members of the next panel are present, I would appreciate them joining us on the platform. I am going to ask my colleague, Commisssioner Saltzman, to preside in connection with the deliberations of this particular panel. We want to welcome each member of the panel and express our appreciation for their being with us.

REMEDIES

COMMISSIONER SALTZMAN. Thank you, Chairman Flemming.

The second panel of our session today will deal with the remedies to these problems which have been focused on during the day and a half of our sessions.

Drew S. Days III will be making the first presentation. Mr. Days is the Assistant Attorney General in charge of the Civil Rights Division for the United States Department of Justice. The Civil Rights Division has overall authority for the prosecution on behalf of the United States of law enforcement officials who have willfully violated a person's civil rights. The Civil Rights Division also coordinates the Government's effort to assure that Federal dollars are not used by recipients in a discriminatory manner. I am sure I speak on behalf of every member of the Commission in offering you a warm welcome, Mr. Days.

STATEMENT OF DREW S. DAYS III, ASSISTANT ATTORNEY GENERAL CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE

MR. DAYS. Thank you, Rabbi Saltzman, Dr. Freeman, Dr. Flemming, and other members of the Commission.

From a criminal law enforcement perspective, the two Federal statutes which have the greatest impact, among those that we have in the Civil Rights Division, upon the policemen's conduct are 18 U.S. Code, sections 241 and 242, and I'd like to spend some time talking about those, since you asked us to address the issue of remedies in these areas of police misconduct and brutality.

These statutes passed during Reconstruction were designed to effectuate the requirements of the 14th amendment and make it unlawful to conspire against or while acting under color of law to deprive an individual of rights guaranteed or protected by the Constitution or Federal laws. These statutes have a direct impact upon law enforcement officers who are guilty of misconduct while purporting to carry out their official duties.

The Civil Rights Division, which I head, is charged with the enforcement of these two statutes; and in connection with our enforcement efforts, we receive upward of 10,000 complaints each year from individuals who believe their civil rights have been violated and that the Federal Government should act in their behalf. While large numbers of these complaints are beyond the jurisdiction of Federal criminal law, the Federal Bureau of Investigation conducts over 3,000 active investigations into allegations of police misconduct annually. These investigations are referred simultaneously to the criminal section of the Civil Rights Division and to the appropriate United States Attorney for prosecutive evaluation.

Approximately 50 to 100 matters are presented to grand juries each year, and of those, 25 to 50 actually result in indictments. For the last fiscal year, 36 prosecutions were initiated, charging 66 defendants, and just over 70 percent of these cases prosecuted by the Civil Rights Division and United States Attorneys resulted in conviction. I might say parenthetically that in 1971 our conviction rate was just over 10 percent in these cases. So we have seen an increase of significant proportions in the number of convictions we get as a result of the indictments that we actually take to trial.

COMMISSIONER SALTZMAN. Mr. Days, I'm a little confused because of the statements made relative to these figures by earlier panelists. The implication, I believe, was that the problem we're looking at is not as serious because the numbers are so small. In delineating that only 25 to 50 indictments come at the conclusion of the year, are you making any implications about the numbers relative to the seriousness of this area?

MR. DAYS. Not at all. Those numbers reflect the cases that we have thoroughly investigated that we think can be taken to a grand jury and actually submitted with an eye toward getting an indictment and then taking it to trial. Many of these cases, and I'll discuss this later, that are regarded by us as being serious matters simply are not prosecutable, because we don't have the requisite evidence to make the kind of case that we think will stand up in court.

COMMISSIONER SALTZMAN. Thank you for that clarification.

CHAIRMAN FLEMMING. Is it also true that some of the complaints that are filed with you, you just have to find that you do not have jurisdiction to handle the complaint?

MR. DAYS. That's correct. There are cases brought to our attention that involve disputes between private persons that really do not rise to the level of any type of civil rights violation.

I was maximizing the point that our conviction rate has increased, but I want to minimize it now by saying that 70 percent is not a very impressive statistic when compared to the conviction rates that U.S. Attorneys or other agencies within the Justice Department or State prosecutors get in the ordinary criminal case. It's usually somewhere above 95 percent; that is, those cases that are actually taken to trial result in plea bargains or some types of conviction. So 70 percent doesn't stand out very impressively against these other statistics.

At the present time, to give you some sense of the magnitude of the job we have, the criminal section has just under 1,300 investigations pending. Some investigation into a criminal civil rights complaint will be initiated whenever the Federal Bureau of Investigation is apprised of a potential violation of our statute. I say the Federal Bureau of Investigation must be apprised because it is the FBI that conducts all criminal civil rights investigations, and even when the Civil Rights Division is directly informed of a possible violation of law, we immediately refer that information to the FBI for its investigation. The FBI agent or agents assigned to investigate the civil rights matter follow an investigative outline which has been prepared for use in all civil rights matters. Now, that investigative outline was the result of a joint effort on the part of the Civil Rights Division and the FBI. Aside from interviewing eyewitnesses, an agent will automatically seek to marshal physical evidence, obtain medical reports and official reports made by police officers in the police department involved. The cooperation that we have been receiving from the Federal Bureau of Investigation in investigating civil rights matters since I've been in Washington has been outstanding.

When the investigative findings are compiled, the report is forwarded to the office of the United States Attorney in the district where the incident occurred and to the Civil Rights Division. In conjunction with the United States Attorney's office, we make a judgment as to whether a matter warrants prosecution, how the litigation should be handled, and what attorney should be assigned to handle it. It has been my objective, one that has met with great acceptance, I'm happy to say, to involve United States Attorneys more completely in every stage of the prosecution of a civil rights case.

Currently, ever-increasing numbers of United States Attorneys are routinely taking not only an active but a lead role in the presentation of civil rights cases. One example of that I found very heartening at the time it occurred. It grew out of an incident in the Birmingham area. The new U.S. Attorney there decided that as one of his first official acts he would prosecute the civil rights case against the sheriff from his home county who had been charged with beating up two black men in that area. He tried the case; he was successful and got a conviction and came away looking for more cases to handle, and this has been true with a number of the new U.S. Attorneys brought in since 1977.

In evaluating the prosecutive merits of a given matter, the Civil Rights Division and the United States Attorney will be primarily concerned with corroboration that exists for the victim's allegations. As a practical matter, this corroboration must be adequate to avoid pitting the testimony of the victim against that of a sworn law enforcement officer to the extent that the evidence clearly weighs in favor of the victim. This adequate corroboration we search for in part defines the standard we use in deciding to approve a case for prosecution. In bringing a criminal case, we must satisfy ourselves that Federal jurisdiction exists, that the interest of justice cannot be satisfied otherwise than by a Federal prosecution, and that a reasonable basis exists to believe that a jury can return a verdict of guilty on the facts contained in the investigative file.

I was not a prosecutor before I came to my job as Assistant Attorney General, but I have been, I think, educated to the proposition that one cannot simply throw a case into a grand jury and ask a grand jury to figure out what went on and decide on its own whether an indictment should be issued. The prosecutor has the duty to go in to the grand jury with the theory of the case, with some sense of how the civil rights laws have been violated, and most importantly, who has done the violating; and, to the extent that the prosecutor cannot in good conscience make those determinations, there is serious question as to whether the case ought to be presented to a grand jury.

In assessing how the interest of justice may be satisfied, we always look to the action or lack of it of local authorities. A Federal criminal civil rights violation will invariably involve a potential violation of State law, and thus we review the activities of State authorities before proceeding. Similarly, in some less serious cases, prompt disciplinary action by a police department taken against an offending officer would adequately satisfy the punitive interest of justice. It should be remembered in this regard that an individual who believes he has been subjected to police abuse has the Federal courts open to him in an action for damages under the civil criminal civil rights statutes, 42 U.S. Code, sections 1983 and 1985, which are the civil counterparts of the sections that we enforce, 241 and 242.

The chief limitation on the effectiveness of prosecution as a deterrent is in the nature of the criminal charge itself. A prosecution for police misconduct does not address itself to the activities of a police department as such or of a city administration per se, but only to the actions of one or more officers in a given circumstance, framed by and limited to the wording of the criminal indictment. Moreover, criminal prosecutions are reactive litigations involving only the calling to account of individuals who have already engaged in acts of misconduct. Any conscious effort to anticipate instances of police misconduct and head them off before they occur must arise from some other source than the Federal criminal code.

In establishing priorities for the future, I believe that Federal prosecutors must continue to be vigilant to identify and act upon all meritorious cases of police misconduct. In particular, we must be sensitive to cases in which the victim has been killed at the hands of the police because these incidents are very unsettling to the community involved, particularly a minority community which may already be suspicious of police actions.

A disturbing aspect of these death cases, as they are known, is that they are usually the most difficult cases to prove. Not only is the victim unavailable to explain himself, but State fleeing-felon statutes often provide an umbrella of protection for the officers involved. In explanation of the phrase "fleeing-felon statute," I mean those State laws which authorize a police officer to use whatever force he believes reasonably necessary, including deadly force, in order to apprehend an individual suspected of committing a felony. If an officer kills such an individual during his efforts to apprehend him, it becomes extremely difficult to prosecute him. We must show not only that the suspect was not a fleeing felon, but that the officer was unreasonable in believing that he was a felony suspect, and after that we must still show that, under all the circumstances, the force used was used willfully with a knowledge that it was unnecessary.

In most cases in which the victim is available to testify, the circumstances are quite different. That is, the suspect is already in custody, and no use of force is warranted; and the victim, of course, is available to relate statements made to him by an officer. For example, "I'll teach you to try to run from me," which plainly indicates the officer's wrongful intent.

I might say also parenthetically that very recently the U.S. Attorney in Chicago, Thomas Sullivan, in consultation with our office, held a press conference in which he indicated that he was closing the files on several investigations of civil rights violations because he had concluded that there was no way he could take further action in light of the Illinois fleeing-felon statute; and he simply made clear to the general public that if the finger ought to be pointed anywhere, it should not be pointed at the United States Attorney but at the State legislature in Illinois and members of the bar who had not taken any action to deal with the fleeing-felon statute, because in those instances there appeared to be perhaps some lack of sophistication and practicality and control on the part of the police officers; nevertheless, they were acting under a State statute that provided that type of protection to shield them from any Federal prosecution.

Because I am so concerned about these death cases, I now personally review every file that comes into the Civil Rights Division involving the death of an individual at the hands of the police. Before we make any final determination about those cases, not only do I review them, but both of my deputies review these cases.

I also believe that the language of the statutes we enforce limits the effectiveness of Federal criminal prosecution as a deterrent to instances of police abuse. These statutes were written over a century ago and contain phrasing that is both imprecise and archaic. By imprecision I mean, for example, the 242 makes it unlawful to deprive an individual of a constitutional right. While case law has made it clear that a defendant—that is, a police officer—need not be familiar with the 14th amendment in order to deny an individual his protection, the cases also make it clear that more than a general criminal intent is required. While this specific criminal intent, which is defined as deliberately disobeying or disregarding the law, is a constitutionally satisfactory standard of intent and may be understandable to lawyers who deal with constitutional issues routinely, I can't help thinking that many jurors become confused when asked to confirm or deny the existence of specific intent.

As to the archaic construction, for example, section 241 protects only citizens of the United States, and section 242 protects inhabitants of States, and 18 U.S.C. 245, a statute passed in 1968 to protect against private interference with certain federally-protected activities, protects any person. So we have three statutes that are designed to bring the authority of the Federal Government in the criminal sphere to bear that have different terms for defining the protected classes: 241, citizens; 242, inhabitants of States; and 245, which protects any person. I believe that the reasons for the different standards of protection in each statute are historical and anomalous and that Congress should act to make the protection of our civil rights statutes both uniform and as broadly based as possible.

Revisions to sections 241 and 242 such as those now pending in Congress will make enforcement of criminal civil rights laws both simpler and more akin to the enforcement of other Federal criminal statutes, statutes in which the standard of conduct demanded is clear and the required jury instructions explaining that standard are concise.

The new criminal code would, for example, apply to all persons, not just citizens or inhabitants of States. The revised 242 would make many common law crimes, such as trespass or assault with a deadly weapon, Federal violations when committed under color of law. Moreover, under the revised 242 the constitutional right to liberty contained in the 14th amendment would be described in terms readily understandable to jurors—assault under color of law, assault with a deadly weapon under color of law, and so on. These proposed revisions will not actually add to existing civil rights jurisdiction, but they will make Federal criminal civil rights enforcement significantly more meaningful to significantly more people. Such revisions to our criminal code should be afforded the highest priority.

I greatly appreciate the opportunity the Commission has afforded me to make these brief observations, and I assure you that both personally and as the head of the Civil Rights Division I share the concerns of

those who seek to improve the great service provided to our communities by our law enforcement agencies. Thank you.

COMMISSIONER SALTZMAN. Thank you for that very clear and precise statement, Mr. Days.

Mr. Lewis W. Taylor, who will be our second panelist, is the Director of the Office of Civil Rights Compliance of the Law Enforcement Assistance Administration of the U.S. Department of Justice. The Law Enforcement Assistance Administration provides funds and technical assistance to State and local governments to improve the criminal justice system, including law enforcement agencies. The office Mr. Taylor heads has the duty to assure that no recipient of these funds discriminates against or denies benefits or employment to any person or class of individuals on the basis of race, color religion, national origin, or sex. Mr. Lewis W. Taylor.

STATEMENT OF LEWIS W. TAYLOR, DIRECTOR, OFFICE OF CIVIL RIGHTS COMPLIANCE, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

MR. TAYLOR. Thank you very much, Mr. Saltzman. I would like to express my appreciation for the opportunity to address the Commission.

I would like to share a few things before I go into my presentation. Basically, we all know how my agency came into existence. It was the riots of the sixties that caused LEAA to come into existence, in that Congress felt that that was the best way to make the streets safe. When one thinks about the title of our agency, the Law Enforcement Assistance Administration, it gives the connotation that we exist primarily to assist in law enforcement. Then when you consider that I head up a civil rights office within that office, then I think there should be a special appreciation of the kind of problems of civil rights in law enforcement nationwide; that is, courts, corrections, and of course, all types of police agencies.

LEAA came into existence in 1968, and our office was established approximately 4 years later. I don't need to remind you of the rather adverse reports that this Commission has put out about the effectiveness of our office. In addition to that, ACLU and National Black Police have sued our agency for $20 million both as the agency and the personal liability, and, of course, the Jordan Amendment has mooted that, and now it is on appeal.

From my perspective, being in the civil rights office, I think both that suit and a number of reports by this agency has assisted me in accomplishing my task. So, I do not see my role as being adversary to you, and I am not quite sure how you feel, but I have been in the field for a while too and I've learned quite a bit about police agencies and practices in the last year that I've been on the job.

518(c) is the jurisdiction under which we function, and that covers both Title VII and Title VI responsibility. The thing I suppose I will

spend most of my time talking about are the Title VI kinds of issues that we have been dealing with lately. As an administrative agency, we had a meeting with the Civil Rights Division approximately a year ago to determine exactly what our responsibility would be in the issue of overenforcement and brutality. That was a very productive meeting, and we were informed, of course, that the criminal section would be handling the issue of brutality. It clarified exactly what the responsibilities of our office were at that time. I'm not quite sure where we stand now, but I'm just saying we are going to get some different instructions pretty soon, and I'm not quite sure how that's going to affect our operation; but we have been involved in looking at the practices of departments, both corrections and the police, as it relates to services and issues of overenforcement.

Basically, LEAA funds about 39,000 recipients. We have professional staff of 17, and I won't comment anymore on that.

In the past we have spent a substantial amount of time looking at police practices as they relate to the complaint process. When I took over approximately a year ago, I found we were spending an inordinate amount of time trying to take a complaint that was really a request for a compliance review, and our staff was going out trying to look at perhaps 20 or 30 practices of a recipient, and it was creating some rather serious problems in investigating and resolving those. So we changed our practices and established that anyone who filed a complaint with us had to have standing and show to us that they were, of course, deprived or discriminated against by the practice of one of our recipients. At the same time, we established what is known as a compliance review process, or we've dubbed it our "SWAT" team, special weapons and tactics. We felt it was very appropriate, since LEAA in the past has financed SWAT teams, that we also have a SWAT team dealing with special problems in the area of civil rights.

Before I took over the office, we were doing approximately two compliance reviews a year. As of last month, we are doing two compliance reviews per month. We were in Louisville, Kentucky, and Asheville, North Carolina, last month. We do major compliance reviews and minicompliance reviews.

When we do the compliance reviews, we look at everything that a recipient does as it falls under the areas of Title VII and Title VI. Some of the things that we have looked at, and I won't name the recipients, are response time as it relates to the minority community as opposed to the majority community; we have looked at the homicide clearance rate as it relates to clearing crimes and murders in the black community as opposed to the majority community; we have looked at underenforcement; we have looked very carefully at the citizen complaint process, and we find some rather significant disparity as a general rule, and the chilling effect that the complaint process has on minority communities. Some of the communities we have taken a look at, particularly as it relates to the issue of bilingualism, we have

found that there are no accommodations for perhaps 25 percent of the community or 15 percent of the community that is not bilingual, so therefore they cannot complain against the services of one of our recipients.

We have also found this rather significant disparity as it was stated earlier in how the internal affairs division operates. When a person is going to be hired, the background procedure is very specific and very precise. In some instances, it has a chilling effect on minorities in being excluded.

But we find almost invariably with internal affairs, if in fact there is not a sworn, signed complaint, that the recipient will not take any affirmative action to take a critical look at the conduct of their officer. We have found many instances when it relates to minority officers that perhaps a minority officer is AWOL from duty, but the majority officer just forgot to call in. We see these kinds of instances occurring over and over again as it relates to how the remedies are imposed or how minorities are screened out of the correctional process as well as the police.

What we have done is we've stated as a policy in our office that we've got to raise our civil rights compliance responsibilities to the same level as we do the management accountability for funds going to recipients and the fiscal accountability. So within the last 2 months what we have done is each professional in our office has to negotiate with their supervisor an MBO [management by objectives] statement of what they will accomplish by the end of the month. This is the goal and objective of how many cases they will resolve. Every case that is not resolved, that individual investigator has to justify in writing why they did not accomplish that.

My feeling is until we get competent management in civil rights as we have in LEAA in management fiscal accountability, we will never make our agency as competent or as reliable as it should be.

Our office is split into two divisions. I gave one side. We have our operations division which deals with individual complaints and our staff deals with that, and then we have, of course, the compliance review division.

Here are some of the things that we have been involved in as of late. We have done compliance reviews of the following recipients within the last year: Hartford, Connecticut—we have an agreement signed with them; the Tennessee Highway Patrol—we have an agreement signed with them. We have done a compliance review of Kansas City Police Department; El Paso, Texas; Salt Lake City, Utah. Sioux Falls, South Dakota, was a recommendation coming from this Commission. Dade County, Florida, was a recommendation coming from this Commission; the Massachusetts Pardon and Parole Board; and, of course, last month we did a compliance review of Louisville, Kentucky, and Asheville, North Carolina.

My primary purpose is to let you know that if in fact we've had a bad record in the past, we are endeavoring to correct that record and do exactly what our legislation mandates that we do. In addition to that, we also have a number of contractors which provide technical assistance and training to our recipients or anyone who needs some help. We have contracts with the National Urban League, which specializes in minority recruitment and also looking at serious problems of retention. We have an organization called the University Research Corporation which is helping us and assisting us in designing a new compliance review manual, and this is the document that we've just completed drafting. It states what we do, how we do it, and what happens when in fact we do not get compliance.

Our compliance review process is comparable to our triggering devices when we do a complaint investigation. Once we complete a compliance review, we send those findings to the recipient. They have 30 days to negotiate with our office. If in fact we do not negotiate that agreement within 30 days, the finding is forwarded to the Administrator, and the Administrator has 24 days to determine compliance or noncompliance. To date, every finding we have sent forward to the Administrator has been supported and the recipient has been found in noncompliance.

At that level, the Administrator notifies the Governor. Because of our block grant process, 85 percent of our money goes to the State. The Administrator notifies the Governor that one of the recipients in that State has been found in noncompliance. The Governor has 90 days to fine the recipient or try to resolve that problem with the same standards that our office established. If in fact the agreement cannot be resolved, on the 91st day, absent a request for public hearing, the funds are automatically suspended. They will be suspended from the 91st day up to 120 days, and on the 120th day at close of business, the funds are automatically terminated. We missed by 1 day terminating the funds for the Kentucky Highway Patrol. We went to 119 days. They requested a public hearing. We are now in the process of appealing that particular hearing.

We have tied in rather substantially with other agencies that are involved. Under our early warning system we have a contract with an organization called the International Association of Official Human Rights Agencies. Under our legislation, whenever a State human rights agency conducts a public hearing on any LEAA recipient, they notify us. Within 10 days, the administration will notify that recipient, and we do not review that finding because it meets the APA guidelines. We do not review that finding. We notify the Governor that he must get that recipient into compliance or the other triggering device will come into being.

We also review all of the court findings, State and Federal. If a recipient is found in noncompliance, that triggers our administrative process. The Attorney General's suit by Mr. Days triggers the same

process, only it's 45 days instead of 90 days when the Attorney General files suit; and there have been a number of them that the Attorney General has filed suit on.

Another agency we have an agreement with is the National Center for State Courts. Our agency has never done a complete review of a court. I don't need to tell you about the judicial immunity of a judge and so forth, but next month I'm taking on a court that receives $1,400,000. So we're going to do a compliance review of the court. The National Center for State Courts is researching the legal issues for us to determine what jurisdiction we have, what constitutes an employee, and we're going to challenge the decisions of staff recommendations to the judges. We cannot challenge the judge's decision, but we can challenge those decisions that are made by staff that impact on minorities and juveniles.

We also have a contract with the Police Foundation that is doing some research to update the status of women in the criminal justice system. We have found that there seems to be somewhat of a correlation between police departments that have substantial numbers of minorities and a number of women that are brought on board. For instance, Detroit has 685 women on the force, which is higher than any other municipality in the whole country, but it is also basically a black administration; and if I'm not mistaken, Washington, D.C., comes in second with about 325. We're beginning to see some correlation between minorities getting in and the number of women that are also coming into the system.

We think that our early warning system is going to allow us to reach out and assist the State agencies in developing their capabilities. Thursday we will be conducting a public hearing on a recipient in Rhode Island with the State, and also because we conduct an investigation because they have refused to allow a woman to go to work in a male correctional facility who is highly qualified and qualifies under union contract. So we're working very closely with them.

The one thing that is creating problems for us, and we share it with most of our recipients, is that we find that, particularly in some of the States in the South, we are concerned about the rise of the Ku Klux Klan and the admission on public television that some officers belong to the Klan and the kind of services a police department with Klan membership can provide to a black community when in fact knowing what the Klan stands for.

Again, like my colleague, Mr. Days, if we can be of any assistance, we stand ready to be corrected, to be given some direction, and you have my personal commitment that we take our responsibility very seriously. Thank you.

COMMISSIONER SALTZMAN. Thank you, Mr. Taylor. In our perhaps stuffy way, though I hope not self-righteous manner, we sometimes view ourselves as the conscience in the Federal establishment, and I am grateful that in that role you view us not as an adversary but as

a friend, and we certainly appreciate this excellent review of your own agency's efforts to fulfill its task.

Mr. Treadwell O. Phillips, our third panelist, is the Manager of the Civil Rights Division of the Office of Revenue Sharing, United States Department of Treasury. The Office of Revenue Sharing administers the State and Local Fiscal Assistance Act of 1972, pursuant to which Federal funds are made available to local governments, including law enforcement agencies. The Civil Rights Division is responsible for assuring that these Federal funds are not used in a racially discriminatory manner. Mr. Phillips.

STATEMENT OF TREADWELL O. PHILLIPS, MANAGER, CIVIL RIGHTS DIVISION, OFFICE OF REVENUE SHARING, U.S. DEPARTMENT OF THE TREASURY

MR. PHILLIPS. Thank you and good morning. I would also like to take this opportunity to thank the Commission for inviting me to participate in this program, which I think is very significant and a serious issue. My remarks shall be very brief, in that my responsibility or my experience in this particular aspect of the police department is very limited.

The Revenue Sharing Act has a very strong nondiscrimination provision which provides basically that no person in the United States can be excluded from participation in or denied the benefits under any program activity that is funded with revenue sharing funds, which is very, very broad in its application. One of the problems that we have is dealing with those governments that do discriminate and, most particularly, dealing with those governments in which the discriminating agency happens to be the police department.

Now we have considerable experience in dealing with the basic employment aspect of that problem. We are able to deal with that very well. We have on numerous occasions done compliance reviews of police departments relating only to their employment of minorities and females within their employment structure. That is a pretty standardized type of operation, and we are able to effect some changes; and our experience has shown that, as a result of our activity, more minorities and females have been brought on board in various police departments. That, however, is the easiest part of the problem.

What is now, in theory and, within the Office of Revenue Sharing, happens to be an internal process where we are currently working with our legal department and the Civil Rights Division, we are also concerned with the manner in which the services rendered by the police departments throughout the country may be rendered on a discriminatory basis. There has been for a long period of time, as all of us who are involved in the civil rights process know, there have been rumors and speculation and, often much stronger than that, indications that some police departments do in fact issue services or render their ser-

vices to the majority community in a much different fashion than that which they render to the minority community.

There are two very key problems which we are dealing with right now. One is, and I think Mr. Taylor mentioned his agency is dealing with it, the response time of the local police departments to the minority community as opposed to the majority community. That is a fairly simple process to document. Most police departments have logs, tapes, etc. in which we can come up with some sort of statistical background to demonstrate that a police department is operating on an equitable or a nondiscriminatory basis or not.

The more significant and the more difficult problem is the highly emotional problem as to those situations where the police departments overreact to members of the minority community as opposed to members of the majority community, and the most serious aspect of that is where the reaction ends up in the death of a minority member of the community. Statistically, we are able to point out perhaps a pattern and practice of a dissimilar treatment afforded members of the minority community as opposed to the majority community, and if we were able to come up with a result based only on the statistical findings, I think that we would have a very meaningful method and manner in which to deal with this problem. However, legally speaking, the situation goes much deeper than that. A statistical finding alone in this type of area is hardly sufficient to warrant an finding of discrimination and, more importantly, the suspension of funding that would emanate therefrom if corrective actions were not imposed immediately.

One of the serious problems which we have not been able to find a way to deal with happens to be that most of your complaints of police brutality, and that's basically what we're talking about now at this particular point in time, have been investigated, and in a majority of those investigations, the police officers who have been accused have been exonerated from any wrongdoing. This causes a very serious legal problem as to what role can we play and what role can the Office of Revenue Sharing play, and any other Federal agency play, in this type of situation where the matter theoretically has been investigated and the wrongdoers have been exonerated from any wrongdoing.

It is our position at this point, and admittedly we have not placed this obligation into effect yet, that if we can find a statistical pattern and practice that a large number of complaints have been registered with a particular police department and the statistics would prove out the fact that most or a major portion of those complaints have been rendered by members of the minority community, we feel that we are in a position at least at a minimum of making certain that some stringent rules and regulations be imposed upon that particular police department at least to open up the complaint process to make sure that citizens in the community have some input into how the complaint process should be handled, some openness insofar as any type of hearing process is concerned that the citizens in the community are to be

able to be involved and to participate, if no more than as a witness and spectator at these hearings. We feel that the complaint process itself should be standardized. These are the basic remedial type of things that we are looking for.

Basically, what I'm saying is that we are looking for those jurisdictions where we can find a strong statistical pattern and practice of complaints against the police department by members of the minority community. We think that this disparity that would be supported by the statistical showing would be sufficient to warrant our agency to place that jurisdiction in noncompliance and request that certain remedial actions be effected to address itself to the issue that a large number of the minority communities feel that they are being abused by the police department.

The questions as to what would happen if the jurisdiction would refuse to accept this type of remedial suggestion, if they would refuse to adhere to this process and would go to an administrative hearing, the legal questions as to whether or not we have this authority to get involved in this field, remain to be seen. But the Office of Revenue Sharing has taken the position that we will get involved in this matter.

At the present time we have no actual complaints from citizens, or I should say we don't have a significant number of complaints from citizens who address this issue; and I would imagine that a large reason for this is that most citizens don't look upon the Office of Revenue Sharing or the nondiscrimination provisions of the Revenue Sharing Act as being particularly concerned with police brutality and things of this nature. However, we do feel that we do have this responsibility. We are in the discussion period at this particular point in time, and, even though we don't have complaints, we would expect to be involved in this type of operation within the ensuing year through the use of a compliance review that would be self-initiated by our office.

So, it is our position that we do have this responsibility. The act itself imposes this responsibility upon us and we intend to do serious and indepth reviews of selected jurisdictions to see if in fact there can be any documentation that would stand up and, in turn, that would allow us to effect some changes in the system so that minorities and the majority community would be treated equally insofar as the use of revenue sharing funds are concerned. That's basically our position, sir.

COMMISSIONER SALTZMAN. Thank you, Mr. Phillips.

Howard P. Carrington is our next panelist. Mr. Carrington is an administration of justice specialist with the Community Relations Service of the United States Department of Justice. The Community Relations Service was created by the Civil Rights Act of 1964 to help communities resolve disputes or disagreements related to discrimination on the basis of race, color, or national origin. The CRS provides remediation, conciliation, and technical assistance services to help communities settle disputes by means other than litigation. Problems of police-community relations are among the many types of problems addressed by the CRS. Mr. Carrington.

STATEMENT OF HOWARD P. CARRINGTON, COMMUNITY RELATIONS SERVICE, U.S. DEPARTMENT OF JUSTICE

MR. CARRINGTON. Thank you very much, Rabbi Saltzman. On behalf of the Community Relations Service, we wish to thank you for the invitation to participate. It is a privilege for me to speak to such a distinguished panel and audience.

The diligence with which the U.S. Commission on Civil Rights is pursuing the pervasive nuances of the police use of deadly force is commendable and timely. President Carter has reiterated time and time again that the pursuit of human rights is the cornerstone of his administration. The rising number of unresolved complaints of police brutality by citizens, especially black and brown, amply attest to the need for tempering discretionary police practices if the attainment of human rights is to be accomplished and the preservation of civil rights maintained.

Those of us who have been directly involved in law enforcement know very well that, without strong public support for enforcement efforts, those efforts are doomed to reluctant public acceptance and possible severe alienation between the police and the community. Of the many impediments to harmonious relationships between police and minority communities, one of the most inflammatory is the use of excessive and deadly force by the police.

In order to put into perspective the respective roles of citizen organizations, Federal intervention agencies, and State and local law enforcement agencies, it might be helpful to outline the nature and the magnitude of the issue of excessive and deadly force and some of the Federal efforts to deal with the problem. According to Dr. Lawrence Sherman:

> Homicide by police officers is a major category of homicide. From 1965 to 1974, 3,456 deaths were caused by law enforcement officers, comprising 2.4 percent of all homicides in the United States in that decade. Since 1970, American police have killed on an average one person per day.

The Public Interest Law Center of Philadelphia, PILCOP, in its 1977 annual report said it had been informed of 272 cases of police beatings in Philadelphia in 1976. According to PILCOP statistics, 175 victims required medical treatment for their injuries. Of those, 113 were taken to hospital emergency rooms by police before they were arraigned. The report said that 146 of those reported beaten by police were black, of which 36 were black women.

An article published in the *Dallas Times Herald* a few months ago stated that the U.S. Commission on Civil Rights singled out the Southwest in general, and Houston in particular, as areas in which allegations of abuse were so widespread as to appear to be officially sanctioned. Of the 7,500 complaints received nationwide each year, approximately 15 percent involve Texas police departments. For exam-

ple, the Justice Department actually conducted some degree of investigation into 4,449 incidents of alleged police abuse in Texas since 1970. Of this number, the most—1,564—originated in the southern area, primarily in Houston, while another 1,109 came from the northern part of the State where Dallas and Fort Worth are the focus. A total of 961 were from West Texas and 815 from East Texas. These actual investigations represent only about half of the total number of complaints the Justice Department has received against Texas police. Of the 4,449 complaints, prosecutions resulted in only 27 cases involving 52 police officers. Only 8 of the cases and 20 officers were successfully prosecuted before Texas juries.

A 1972 report of the Chicago Law Enforcement Study Group, which conducted a study entitled, "The Police and Their Use of Fatal Force in Chicago," revealed comparative information on civilians killed by police and police killed by civilians for each of the five largest cities in the United States as determined by the 1970 census. Those studied were New York, Chicago, Los Angeles, Philadelphia, and Detroit. The source of the information was the Police Weapons Center of the International Association of Chiefs of Police and indicated the following. The number of civilians killed in New York from July 1970 until March of 1971 was 21. The number of police deaths was 5. In Chicago, 32 civilians were killed and 7 policemen were killed. In Los Angeles, there were 8 civilians killed with no police fatalities. In Philadelphia, there were 13 civilians killed with 3 police fatalities. In Detroit, there were 4 civilians killed with 3 police fatalities.

In checking the records of a Chicago newspaper morgue, the study found that there were 79 civilian deaths by police action during the calendar years 1969 and 1970. The carnage represented by these figures is staggering and becomes even more so when figures are compiled for the rest of the Nation. The study group reported that, during a 44-month period, the police in Chicago killed a civilian every 11.9 days and wounded one every 4.3 days. On the other hand, a civilian killed a policeman every 64.1 days and wounded one every 18.2 days.

The ethnic disproportionality is clearly evidenced by the 2-year study in Chicago, which showed that 56 black males and 3 black females were killed by police action, representing 74.8 percent, while 19 white males and no white females were killed, representing 24 percent, and 4 of those 19 were Spanish surnamed.

Data of the 24-year period from 1950 to 1973 shows an average of 245 persons killed by police in the years prior to 1967. For the 7 years after 1967, the average was 359 per year. Of those, 50 percent were black. Here again, records are not clear as to the number and proportion of those killed who were Latino, since they were counted as white in census tracts.

I have cited the foregoing examples in order to present a picture of the gravity and magnitude of this problem which besets communities of this nation. Nor can we be lulled into thinking that this epidemic

is centered only in the large metropolitan areas. CRS has documented such cases in places like Eatonton, Georgia; Webster County, Iowa; Quincy, Illinois; Blackfoot, Idaho; and West Liberty, Iowa. Police-community friction arising from the issue of deadly force knows no boundaries in terms of city population, size of city, or size of the municipal police department.

A study by the Office of Policy Planning in Seattle notes that while blacks account for only 9 percent of Seattle's population, they comprised 49 percent of the people shot by the police in a 3-year period. A Police Foundation report on deadly force which covered seven major U.S. cities found that 80 percent of nonfatally-shot civilians were minority, while 78 percent of those killed were minority.

COMMISSIONER SALTZMAN. Mr. Carrington, may I ask if that is a written statement that you are presenting to us?

MR. CARRINGTON. Yes, it is.

COMMISSIONER SALTZMAN. Do you have much more to go in there?

MR. CARRINGTON. No, I do not. I didn't realize that our time was limited.

COMMISSIONER SALTZMAN. We do have one more panelist. Can you submit the entire written statement?

MR. CARRINGTON. I most certainly can, and in view of the concern for the time, I'd rather yield then to the next panelist.

COMMISSIONER SALTZMAN. I'm sorry to interrupt you. We do have to conclude this panel at 12 o'clock.

[The remainder of Mr. Carrington's statement follows:]

> It is unlikely that CRS can offer a program which will eliminate the staggering loss of life attributable to "justifiable homicide by police action" nor shall we try. Our task is of lesser reach but of more immediate promise in reducing the lethal impact of police slaying and in effectuating an overall reduction in the number of citizens' complaints of nonfatal excessive force.
>
> The remedies we seek will only be accomplished through the concerted efforts of police organizations, police administrators, community organizations, both national and local, private sector organizations, religious, fraternal, and sorority organizations, academicians, and business, as well as elected officials and government functionaries. The police have traditionally, although tacitly, served the paramount interests of the status quo in most communities. We must enlist the active participation of these elements if we are going to show an appreciable reduction in the lamentable statistics you have just heard.
>
> The problem is not utterly intractable. In some communities, forward-looking police executives have initiated policies and practices designed to assure that deadly force is used only under the most necessary circumstances. The experience of certain individual police departments indicates that the number of police

homicides can be significantly reduced and that such reductions can be achieved by changes in police policy and practices.

In New York City, for example, the number of police homicides was reduced from over 63 in 1972 to 54 in 1973. In 1977 it was down to 30. In other instances, commendable change has resulted from dialogue and negotiation between police and community leadership. Unfortunately, in many communities negotiation is not successful because it occurs in an atmosphere of acrimony. The community becomes aroused and seeks change only in the wake of a tragic incident, and that sharp edge of concern quickly erodes. At the same time, police agencies, like all institutions, tend to defend and justify their actions and policies most vigorously when under attack. Efforts to arrive at reasonable solutions rarely prosper in such a climate.

At such times, issues are often misrepresented and polarized. One side is depicted as condoning murder by police, the other side as condoning wanton criminality. In actuality, the gap is not really broad. Both the police executive and the minority community share the goal of crime reduction in the minority community. Both agree that the police officer should be authorized to use firearms to defend his or her own or another's life when other means are inadequate. Neither believes that the police badge should be a shield for brutality or racism.

Basic differences concern the nature of controls to be exercised and the degree of accountability to be required of police in the exercise of their discretion. While such issues may still represent wide division, they are at least responsible to good-faith negotiations. Stubborn as the problem is, there are a number of harbingers of progress. Among these is the increasing attention being given to the problem.

Police administrators are taking a closer look at the issue of deadly force and discussing it with their peers. Officials of local government are increasingly expressing concern and reviewing relevant policies. The National League of Cities is increasingly being called upon by municipal officials to provide technical assistance in dealing with the issue of deadly force.

The problem is receiving increasing attention from municipal officials for at least two reasons. One can be described as "political heat." When a shooting is followed by protest and sometimes disorder, it often leads to confrontation in the council chamber, where political careers can be at stake. The second reason is the question of municipal liability. Local governments are increasingly being sued by individuals alleging violation of their rights by police officers. While few such actions ultimately result in verdicts against the officer or municipality, there have been some very costly awards.

In addition, out-of-court settlements and legal costs, while not known in the aggregate, have been sufficient to cause a revolutionary increase in the cost of municipality insurance. In the current climate of municipal tax and budget cutting, police actions that result in escalating costs are likely to come under scrutiny and will hopefully create, under internal administrative command, a perceptible abatement of overzealous law enforcement practices.

We are witnessing a breakdown in dialogue because of these practices. Rather than standing in a mutual relationship with the people, the police are often in the unfortunate position of being in confrontation with racial and ethnic groups, social action and civil rights groups, the adolescent community, and the courts. If the emotions of fear and hate characterize the current relationship between the ethnic minority communities and the police, there is both an immediate and long-range effect of the continuation of these conflicts. An immediate effect is the fact that, increasingly, contacts between policemen and minority-group members are tinged with the possibility of violence. Of even greater concern, however, is the transmission of these attitudes to succeeding generations of young people.

We at CRS have found that, if and when the dialogue between the community and law enforcement agencies breaks down, reassessment of problems becomes very difficult, and the potential for constructive action is strongly curtailed.

CRS stands firmly committed to expend its energies and resources in working hand and glove with all of you here assembled in order to help in the reaffirmation of humane police-community relations as the fountain from which our domestic human relations will spring.

COMMISSIONER SALTZMAN. Mr. Amitai Schwartz, our final panelist, appeared earlier yesterday on a panel entitled "regulating police practices." He is an attorney with the American Civil Liberties Union Foundation of Northern California. He will share with us here his experiences as an attorney for private litigators in cases challenging police misconduct. Mr. Schwartz.

STATEMENT OF AMITAI SCHWARTZ, ATTORNEY, AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA

MR. SCHWARTZ. Thank you, Mr. Saltzman. I regret taking up some of Mr. Carrington's time.

I want to make three general observations today in connection with remedies. I think over the last 2 days what we have heard would probably fill up two notepads with suggested remedies that various speakers have outlined over the course of those hours.

I want to focus on the Federal role with regard to civil rights and civil liberties and police abuse. Secondly, I want to talk about private damage actions against the police, and thirdly, I want to talk a little more about the rulemaking process, which is something this Commission has spent a good deal of time on.

In terms of the Federal role, I think it's interesting to contrast the involvement of Federal agencies from the Department of Justice to the Civil Rights Commission, to LEAA and the Office of Revenue Sharing, as they relate to police abuses, the routine police abuses, not the severe criminal violations that the Department of Justice has the power and the obligation to investigate and prosecute, but the routine sort of matters that were brought up over the last couple of days. If you contrast that with the Federal involvement in other sorts of interactions, such as the Securities and Exchange Commission or the Fair Campaign Practices Commission or the Federal Trade Commission or the Food and Drug Administration, there is impressive and pervasive Federal regulation of all sorts of conduct throughout the country in terms of protecting people's property, people's health, people's financial matters, and what-not. But when it comes to police, I think we're only at the beginning of a really solid foundation in terms of any sort of Federal regulation and Federal review.

I think the Federal review process can be expanded in three ways. First of all, I think the criminal jurisdiction can be expanded somewhat in terms of the kind of cases the Justice Department can prosecute.

Secondly, I think the two Departments who are investigating civil rights compliance could, if Congress gave them the power, expand their jurisdiction to include not only discrimination on the basis of race or national origin, but violations of rights guaranteed by the Constitution generally and not just looking toward discrimination. Discrimination is one part of the problem. It's not the entire problem.

Third, I think that either the Civil Rights Commission or the Justice Department or some other agency can begin to investigate the investigations that local agencies take up. There is no way in the world that a Federal agency can investigate all complaints of police misconduct, but I think a Federal agency can and should investigate and approve and clear the investigative procedures that the local agencies use when they conduct their own self-investigation.

On the subject of damages, which is something I touched on briefly yesterday, and I attempted to make a point that suits for money damages by individuals for police misconduct are relatively fruitless, except in the most egregious cases. The reasons are that the victims are generally not pillars of the community. They are suing the police, who have all the resources of the police department and the prosecutors behind them, and there are various immunities and what-not.

But I think there are two things that could be done either on a congressional level or a local State level; and that is, first, to require that the employing agency—that is the city or county or State—indemnify

the police officer in the event that the officer is sued and the victim wins. In many States if an officer is sued by an individual and loses the lawsuit, he or she pays out of their own pocket. That means that in many cases, even if the individual does win, they never recover any money because the officer doesn't have the money to pay. Many States have gone over to a system of assuming the responsibility for paying out those money damages by requiring that the agency itself represent the police officer or defendant and, secondly, that the agency itself pays. That also has the benefit of ensuring that the local agencies don't just leave it up to the individual officer to make decisions which may or may not get him in trouble or get him sued, but to take prophylactic measures which prevent as much as possible the agencies from having to pay out money damages when people sue.

It's like any other insurance program. There are two ways to work insurance. You can just do whatever you want without thinking about it, assuming that the insurance company is going to pay in the end anyway. Then your insurance rates soar out of proportion. Or you can take preventive measures to try to ensure against actions which are going to result in big payoffs of money.

The third is the rulemaking process, which is something we've discussed at length over the last couple of days. I just want to give you one example, and possibly two, of some of the things we did in the San Francisco Bay area with trying to actually use the rulemaking process to deal with concrete abuses.

We were faced in a situation in a suburb north of San Francisco with a minority community that was very concerned about the use of police dogs in that city. They felt that on numerous occasions dogs had been used improperly and inappropriately, and they wanted to get rid of the dogs altogether. The police department was opposed to ridding itself of dogs generally, but was willing to listen to some sort of solution, given the fact that the minority community felt strongly that they were being abused.

The solution was for the department to write a regulation or a rule which spelled out in very clear terms under what circumstances dogs would be used and under what circumstances they would not be used. For example, the regulation said dogs would not be used for routine patrol in residential neighborhoods. They would only be used for commercial blocks. Dogs would only be used to investigate and sniff out drugs, guns, contraband, things of that sort. They would not be used for crowd control.

It took a while and there was some give and take between the community and the police department; but I think, in the end, the police department was satisfied because it remained with the power of the opportunity to use their dogs in circumstances where it was appropriate to use them. On the other hand, the minority community was assured after this policy and these rules were worked out and made public that the dogs would not be used and that they wouldn't be used as means of endangering the community.

I think I will stop there. Thank you very much.

COMMISSIONER SALTZMAN. Thank you, Mr. Schwartz.

MR. DORSEY. Mr. Days, I did want to get back to one area that you had been talking about that is of particular interest to us, and that is, you indicated the fairly strong reliance that the Justice Department has in fulfilling its responsibility on the investigations provided by the Federal bureaus. In our previous panels there has been some indication that there is a potential problem between local bureaus in their continuing reliance on local police agencies and how that may affect the vigor or completeness with which they investigate. I'm just wondering if you could indicate whether or not that might be a reasonable place for the Commission to address its attention to see if there are some possible problems in that area?

MR. DAYS. It's certainly something that the Commission might look at, but my experience has been that, of course, there are always problems with human beings and associations as they develop. The FBI does rely upon local law enforcement to carry out its other functions, but I think I can say without any reservation that there is a strong commitment at the top in the FBI in the person of Director William Webster insofar as civil rights enforcement is concerned, and I think he has passed that down the line, and the civil rights investigations that we request are controlled basically out of Washington. There is a special unit in the FBI that is responsible for coordinating these investigations. I feel very confident looking to them. To the extent that we do have problems from time to time with an individual FBI agent or a particular office, I think that we have been able to deal with those problems as they arise and have not encountered any pervasive problem in that respect.

COMMISSIONER SALTZMAN. Chairman Flemming?

CHAIRMAN FLEMMING. Mr. Days, you commented in your presentation on the issue that is involved in the use of deadly force, and that has been discussed quite often during the course of this consultation. I'm wondering—and I know that you have been brought face to face with this as you have reviewed each one of these cases that has come before you—I am wondering if you are in a position where you could share with the Commission your own views as to the best approach we can take as a nation to deal with this issue. I appreciate that it is complicated, and I appreciate that it does involve State law as well as Federal law and so on; but if it is a major issue confronting us, what is our best approach as a nation to deal with it?

MR. DAYS. Well, you always ask easy questions, Dr. Flemming, and that's a perfect example of your style.

CHAIRMAN FLEMMING. I know that. I just want to cover your views in view of the fact that you have been confronting this.

MR. DAYS. I have been confronting it for quite a while. In fact, before I entered government service, I was responsible for making most of the bad law, at least in the Sixth Circuit, on the question of deadly

force. I brought a number of individual actions against police departments on the ground that the use of deadly force under the circumstances violated the Constitution. I was successful in urging an adoption of that principle by the courts I argued before.

Nevertheless, I have seen various jurisdictions make efforts on their own to provide clearer rules along the lines that Amitai Schwartz mentioned, so that police officers have some sense that, even though the law may permit them to use deadly force under certain circumstances, they are not obligated to do so.

Certainly, training in the police departments can make a difference. In a case that I tried, I probed the whole question of training of police officers in the use of deadly force; and what the evidence on the record reflected was that, for every 20 hours spent on how to apprehend a person conducting a bank robbery or other types of criminal acts, there might be 15 minutes devoted to apprehending a fleeing felon and the use of deadly force. One trainer of a police department said, "We just tell the recruits that they'll have to look to their own consciences in situations where they might be faced with a question of when to use deadly force." So that's hardly training and that's hardly direction.

Certainly, some States have even changed their statutes so that deadly force is used only under a limited number of circumstances. It's not used for every fleeing felon, but felonies that are against a person and where the fleeing individual reasonably poses a threat to the police officer or a third person, and I think certainly a lot could be accomplished there, but it's not a panacea. Even in those States where such rules exist, there will be from time to time officers who act irresponsibly and thoughtlessly in using the enormous power that they have. So I think the suggestion that is made really steps along the way, Mr. Chairman.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Other members of the panel may want to react to that. We have a few minutes. I will call on Commissioner Freeman if she has any questions.

COMMISSIONER FREEMAN. I have no questions.

COMMISSIONER SALTZMAN. Commissioner Ruiz, any questions?

COMMISSIONER RUIZ. A panelist yesterday morning from a minority community in Texas appeared to have a great sense of urgency with relation to the alleged documentation of around 56 cases of police misconduct before your department. Does a classification exist within the department of high priority or low priority and how is that determined?

MR. DAYS. As I tried to indicate, Commissioner, in my earlier statement, we are giving significant consideration to death cases, and we have been trying to respond as promptly as we can and as thoroughly as we can to allegations, particularly allegations from the Southwest, of systematic brutality. But it is hard to create classifications of high

priority and low priority. For example, there may be a death case that upon analysis will probably not support any further action by us; as opposed to a beating of an individual, we have a great deal of evidence, we have corroborating witnesses, and therefore it may be a situation where we move with the beating case before we move on the death case. But I think, as a general matter, we are looking at the death cases and giving them high priority because of the gravity of the offense and also the impact that these types of incidents have upon police-community relations.

So I cannot give you a definitive response. What we try to do is get these investigations conducted promptly, all of them. For example, some of the death cases in Texas that were brought to my attention when I was in Corpus Christi meeting with groups of Mexican Americans were investigated the next day. We had the FBI going out to look at it.

COMMISSIONER RUIZ. Thank you.

COMMISSIONER SALTZMAN. I would like to conclude this panel by first of all expressing my apologies once again to Mr. Carrington with an assurance that his entire statement will be in our record and will be carefully examined for its important contribution to this panel, and I thank each one of you on the panel for the concise and clear manner in which you have made your presentations, enabling us to determine our further efforts and directions in this important and significant area. Thank you very much. I turn the session back to Chairman Flemming.

CHAIRMAN FLEMMING. May I join Commissioner Saltzman in expressing appreciation to each one of you for being here with us in a very forthright manner setting forth your views on the issues that confront us as we deal with this overall problem. It has been very, very helpful. Thank you very much.

If the members of the final panel are in the room, I would appreciate their joining us on the platform.

I will ask my colleague, Commissioner Ruiz, if he will preside during this presentation by this panel, which becomes the final panel in regard to our consultation.

RESEARCH AND DATA NEEDS

COMMISSIONER RUIZ. Thank you, Mr. Chairman.

The panelist who will make the first presentation is Peggy Triplett. Ms. Triplett is Special Assistant to the Director of the National Institute of Law Enforcement and Criminal Justice of LEAA. The Institute engages in research in many areas affecting policing. The benefits of that research are made available to the law enforcement community and to other interested parties through the Institute's publications. The Institute is presently involved in a research project having to do with the use by the police of deadly force. Ms. Triplett.

STATEMENT OF PEGGY TRIPLETT, SPECIAL ASSISTANT TO THE DIRECTOR, NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, LEAA

Ms. TRIPLETT. Thank you. I am happy to be here to talk about the work we are planning to conduct in this area, and in the interest of time, I will refer to my organization as the Institute instead of the long National, etc.

I would also like to just briefly mention some of the events that occurred that led up to the research project we are planning to conduct.

In March of this year, the Institute pulled together approximately 25 minority researchers to come into Washington to assist us in identifying and developing and prioritizing a minority research agenda. We had not done this in the past. Seven priority areas of research surfaced during that 2-day workshop, and the use of deadly force was the number two priority area of research.

Following the March workshop, NOBLEE, the National Organization of Black Law Enforcement Executives, convened their annual conference in St. Louis, which Commissioner Freeman attended, and the organization invited the Institute along with the Community Relations Service to conduct a workshop on the use of deadly force. We did and Dr. Lee Brown, who I understand was not able to make the hearing yesterday or today, was also one of the panelists there, and I would like to just quote from his presentation of his perspective and recommendation on the use of firearms. Dr. Brown stated that:

> A policy developed to control the police use of deadly force must be developed to ensure the safety of both police and the public. Any such policy must not be complicated, must be easily understood by all police officers, must be simple to apply, must be easy to enforce, and must hold those officers who use force accountable for their actions.

He further stated that:

> All police agencies throughout this nation should adopt a firearms use policy that states clearly and explicitly that no officer should discharge a firearm except to defend one's own life or the life of another person, and then only when there is no other alternative. There should be no guesswork, no room for interpretation. If that were accomplished, we would see a reduction in statistics dealing with the disproportionate representation of minorities being killed by police officers throughout this nation.

Dr. Brown also participated in a workshop that was held on the same subject in Chicago a few months later, along with Dr. Paul Takagi and a few others that have been before you. We in the Institute are going to be publishing a compendium of papers that emanated from both workshops, along with a literature of review and analysis that has been conducted by the Police Foundation, and we are hoping that that will be out and available by March of 1979.

In October of this year the Institute pulled together another group of about 15 researchers and practitioners who have specifically been involved in the area of use of excessive and deadly force. At that time we had not actually determined which area we would be looking at or if we would be looking at both excessive and deadly use of force by police officers. Following that 1-day session, it was the consensus of the group that we should be keying in on the use of deadly force and that, based on the work that we would do in that area, we would naturally also touch upon excessive use of force. From that workshop we have gotten a program solicitation together that we will be disseminating and announcing within a month through the *Federal Register*, announcing the fact that we are planning to conduct research in this area and that we are inviting concept papers.

The Institute intends to undertake a research effort to identify critical organizational policy and administrative elements that may account for the use of deadly force by law enforcement officers and to further our understanding and knowledge of this particular issue. The ultimate objective of this research is to gain information and develop a knowledge base which may, in turn, aid in the development of strategies and techniques for reducing the number of homicides by police officers.

According to the vital statistics of the United States, police officers have killed on the average one person per day since 1971. Furthermore, the ratio of police killed to police killing has remained approximately one to five. According to Arthur Cobler, police are the only representatives of governmental authority who in the ordinary course of events are legally permitted to use physical force against a citizen. Other agencies of state power rely upon requests, persuasion, public opinion, custody, and legal and judicial processes to gain compliance with rules of law. Only the police can use firearms to compell the citizen to obey. The police are also in a special category in that they are sworn to enforce the law at all times, on or off duty in most jurisdictions, so that their access to firearms is constant and legal. The possibility of excessive use of firearms in the course of police duty and thus the power of life and death over the citizen is facilitated by the unique legal definition of responsibility of the police in our society.

Although a sizable number of killings by police officers may be justifiable and necessary, one report, in which 1,500 incidents between 1960 and 1970 were examined, has suggested that one-fifth of the homicides studied were questionable, two-fifths unjustifiable, and two-fifths justifiable.

According to sociologist Albert J. Reese, Jr., the homicide rate by police officers has been rising at a rate that is not commensurate with population growth and that, furthermore, the persons killed are disproportionately minority persons. Some authorities claim that racism is a major factor in these results, inasmuch as the laws which set forth the written standards for acceptable police behavior and conduct, as well

as the judicial apparatus set up to enforce such standards, are established and administered by persons with interests and perspectives representative of white Americans.

There are also legal aspects of the problem that must be examined. State laws regarding use of deadly force by police officers differ substantially, but basically they fall into three major categories: common law, forcible felony rules, and the model penal code approach. Under common law, a police officer may be justified in the use of deadly force under the following circumstances: self-defense, prevention of the commission of a crime, recapture of an escapee from an arrest or from a penal institution, stopping a riot, or effecting a felony arrest. Twenty-four States still adhere to the common law justification for use of force. Seven States have the forcible felony rule, which specifies the kind of felonies for which deadly force may be used. Seven States have adjusted the model penal code approach which restricts the use of deadly force to violent felonies, and the remaining 12 States do not have justification statutes limiting an officer's use of deadly force. Furthermore, the definition of felony differs from State to State.

Although the rates and legal aspects are critical topics that must be addressed, the aim of the Institute's research is to examine issues and factors that may afford a change in the rate of police homicides. For example, the question of what has happened in terms of organization, administration, or policy in certain major cities experiencing a reduction in police homicides will be addressed. In other words, this research should identify elements that may directly relate to the use of force. For instance, the level of specificity of a firearms policy or the type of review following any incident may have some type of effect. Similarly, given a comparable racial and socioeconomic factor, the question of why some States have considerably more incidents of police using deadly force than others is also important, as are various legal aspects as to the question of whether rules concerning fleeing felons result in a significant difference. It may even be worthwhile to look at the outcome of civil and criminal litigation in cases involving deadly force, as well as review board findings and recommendations in the selected cities.

This research will be for an 18-month duration and the award will run between $250,000 to $275,000 and we will be accepting concept papers for the project. The deadline is February 16, 1979.

Thank you.

COMMISSIONER RUIZ. Thank you very much.

The next panelist is Dennis Smith. Dr. Smith is an associate professor in the Graduate School of Public Administration at New York University. He holds both a master's and a doctorate in political science from Indiana University.

Dr. Smith has published extensively on a range of topics, including measuring police performance, the effects of training and education on police attitudes, police professionalization, and police organizational

theory. He has done substantial research in the areas of police education and citizen evaluation of police and police organization alternatives. He is presently engaged in the analysis of substantial data so as to test certain theories relating and related to the impact of education and training on police performance. Dr. Dennis Smith.

STATEMENT OF DENNIS SMITH, ASSISTANT PROFESSOR, GRADUATE SCHOOL OF PUBLIC ADMINISTRATION, NEW YORK UNIVERSITY

DR. SMITH. Commissioner Ruiz, Mr. Chairman, and members of the Commission, I would like to extend my thanks to you for inviting me. I think the expressions of appreciation that the various panelists have given go beyond the normal sort of courtesy. I think that I sense and certainly my feeling is that we feel that your Commission has come upon the scene at a very important time. I think its importance has to do with the fact that many people, I believe, feel that this is no longer an area of problems, and I think that in itself is a problem and one which the work of the Commission can very directly affect.

I am going to respond to two particular questions in the set of questions that were assigned to this panel, one having to do with research now underway and the other having to do with the data needs which I think are most pressing in connection with this area of concern.

Part of my intention in spending some time on research underway is the feeling that I have that the Commission has received in discussions that I've heard over the past 2 days a variety of very interesting discussions on possible ways of dealing with this problem, but many of the kinds of suggestions you've received are more in the order of indictment speculation than suggestions that are based on very solid research. In some cases the recommendations that you got were associated with the caveats about how firmly the ideas have been established, but the work that I have been involved in with Professor Helen Rostein at Indiana University and Professor Gordon Whitaker at the University of North Carolina over the past few years has been oriented in large measure to trying to examine through empirical research the factual premises underlying reform proposals in the area of policing. My own research, as you've mentioned, is concentrated in particular on reform proposals dealing with professionalization of police.

I am involved in two studies, both funded through Federal agencies, which I think the Commission should know about. One is sponsored by the National Science Foundation, called the Police Services Study, and involves the other researchers that I just mentioned, Rostein and Whitaker, and over a several-year period has looked at the provision of police services, in particular—police services to 25 communities located in three metropolitan areas, and in particular has emphasized the relationship between organizational arrangements and provision of

patrol services. We have collected data using surveys of officers and citizens; we have ridden with police officers on patrol. We have debriefed citizens after they have observed encounters with the police. We have monitored the process of receiving calls at the dispatch desk because we feel it is for many citizens as far as their contact with the police gets, and, if they get turned off there, there may not be a followup encounter. So we have been including that in the research that we're doing, and we now have an enormous body of data from these studies and sorting it all out is taking time. I think a lot of the studies that are underway will be available during the duration of your study, and I am certain that we will be making them available to you.

There are several different areas that I want to mention in particular because they have been emphasized in previous discussions before this Commission, and they have to do with an approach to dealing with problems of police which George Datesman yesterday characterized as a personality-characteristic approach, using the idea that manpower, the characteristics of the personnel, are really at the heart of police problems. People have tried to devise a variety of ways of changing the characteristics of police, giving them more training, more education, changing the race or sex of persons engaging in providing police services.

In the research that we have done, we thought that this was a reasonable avenue of reform for people to propose and for us to examine because all the discussions of policing suggest that the individual officer, because of his discretion, does make a difference, that the kinds of input that he makes or she makes into the process are not so structured and controlled by the organization that their individual differences don't make a difference. So it seems reasonable that the differences would make a difference in the provision of police services that we have been looking at.

In some of the areas where people thought we might have a possible impact, I'm not so sure. My own research on the effects of training, and in particular recruit training, prove to be especially unpromising, in the sense that in the study that we did in 1972 in the St. Louis area, looking at some 29 communities, there was a wide disparity in the amount of recruit training which officers recieved. Larger departments were giving their officers four times as much training as some of the smaller departments, and yet in the examination of the relationship between the amount of recruit training that the officers on the average had and the whole variety of measures of performance, there were no differences.

When I examined the underlying speculative relationships between training and performance, I think I found an explanation in the sense that the expected differences in terms of attitude, the expectation that training would affect attitudes and then would affect performance seemed to be missing. Training at the individual officer level didn't seem to be associated with differences in attitude.

Other research looked at officers over time as they moved through their training experience and onto the job and found that even if the training experience itself made a difference, it produces officers, for example, who have greater concern with civil rights, but not very long after they had been on the job those kinds of concerns tend to diminish. So the effects of training appear to be eroded even when they occur. Mr. Saltzman's comments yesterday were particularly germane to that hypothesis.

In the area of education, I think that I particularly want to caution any rush to judgment. I began my own research on education of police with a great deal of skepticism, and nothing that I've found has done much to persuade me that that skepticism was wrong. I doubted that a few hours in the classroom each week, particularly if the classrooms involved associations with the same people that the officers worked with being taught by other police people who were primarily experienced police officers—I doubted that that would have much of an impact. And the research that I've done in the St. Louis area, Rochester, New York, area, Tampa, St. Petersburg, Florida, area, in St. Louis, Missouri, area—in none of those areas when we examined the relationship between education and performance do I find that there is a noticeable impact on education. But in the review of all published studies on this relationship which I did for the commission on which Dr. Sherman served as executive director, the main conclusion I had to report was that the methodologies that were used in the research relationship between education and performance were all so weak that we really don't—including my own—have solid evidence on the effects of education, particularly the effects of education in different kinds of organizational environments. The work that I'm doing right now under grants from the Law Enforcement Assistance Administration, looking at relationships with education and performance over a 5-year period, looking at data from 1972 in the St. Louis area and 1977, may enable us to answer that question with some greater confidence about the methodology, but the findings from that are not in.

So, I'm just saying that in the past great promises were made for education which were not based on empirical evidence, and now there are some who are ready to say, "Well, education is not working; it doesn't make a difference." But, again, prior to the emergence of evidence, this is really very satisfactory for now.

We have included in the data from our study a capacity to look at the effects of racial composition of police departments, and we are currently preparing a separate article on that which will be completed during the duration of your study.

My colleague at New York University, Diane Viarsan, has been looking at the relationship between the sex composition of police departments and various attributes of performance and also looking at the expected relationship between the sex of an officer and attitudes

toward the community, towards the police role, and so on. So far her research suggests that that avenue of reform is not likely in the short run to produce the kinds of differences that some people have promised. Women in police roles, from our study, don't look that different in terms of their attitudes in terms of the men officers that they work with, and the departments with a higher proportion of female officers don't seem to have fewer incidents of anger in police-citiz .. encounters or violence in police-citizen encounters and so on. This may be in part because still with the introduction of some women into police roles they are distinct minorities, and it might be that we just need more women to see whether or not it would have an effect.

But there are other reasons to doubt the likelihood of the effects if other things remain the same, and this has to do with how women self-select themselves for the police role and what kind of socialization and other pressures go on when they enter the police role, which kinds of women offer themselves as candidates for employment by police and are actually accepted. Lots of reasons there seem to suggest that there would be pressures leading to selection of persons who would fit in and thus reducing any possible impact that there might be even if women before entering policing did have different sorts of attitudes and different capacities to bring to policing.

In those areas of personal characteristics as the approach to police problems, at present there is either uncertainty because the research is not complete or reasons to be somewhat doubtful about how much is going to come from that.

I am going to switch to another area and simply be very abbreviated about our study of the effects of organizational characteristics. The main thing I want to say in this connection is that we have been doing these studies conceptualized to police organization involving more than just the police bureaucracy, more than just the ranks from chief to patrolman.

We feel that the nature of the policing process is such that it is one of the public organizations that very much has to include citizens for a variety of things. Mr. Reese and others have shown that police are very dependent on the variety of citizen inputs in order to carry on their operation, and so they as a matter of fact are important members of the organization; and in doing research on police organization, we have to look at that process of receiving inputs from citizens, from reporting of victimization through complaint behavior and so on. In a sense, you can think of citizen complaint behavior as citizen coproduction or participation in the production of supervision of police.

You hear a lot about how invisible the activities of policemen on patrol are, and when you hear that, they are referring to invisibility to the command. Much of what they do on the street is quite visible to the citizen, and for that reason in our study we have tried to use as one of the sources of data on police performance citizen surveys, but in your thinking about what kind of organizational arrangements might

affect the protection of civil rights, the role of citizens and their participation in the organization needs to be considered.

Professor Sherman's comments yesterday about evidence regarding citizen dispositions toward civil rights is particularly germane. In our own study in 1972 we found that on a question about whether or not force was effective in the control of crime, if more force would make for less crime, approximately 40 percent of the police officers expressed some degree of agreement with that. More than 65 percent of the citizens we surveyed expressed some degree of agreement with that in general, and even 35 percent of them felt that that would be effective in their own neighborhoods.

Now in 1977, our survey of citizens found, I think, an important thing, that the correlation between citizen evaluations of police, the relationship between what citizens commented about the quality of police they receive, is highly correlated with the perceptions of the crime situation, the threat that they face from burglary and so on, not related at all to their perception of the equality of treatment which police provide to the community. So, as long as citizens' priorities in evaluating police involve that degree of emphasis on crime and disinterest in things like equality of treatment, it seems unlikely that you could have the kind of equality of civil rights protection that is needed.

In the 2 minutes that remain, I'd like to suggest a particular mechanism that could heighten sensitivity of the whole Nation to the problem of civil rights. It seems to me that at the national level there could be devised a complaint procedure whereby citizens could go to any post office and pick up a complaint form that would be standard for the whole Nation. It would have an address on it, be self-stamped with multiple copies, and it could be sent to a central agency at the national level, which would return one of the copies to the relevant police agency with a set of additional forms for information about how they had responded to this complaint; and this could serve as a national sort of citizen complaint index corresponding to the FBI crime index, which could on a community-by-community basis give some reflection, an imperfect reflection just as the FBI index is an imperfect reflection of the crime situation, but an index of the volume of complaints of citizens regarding their police.

It has been found in a variety of studies that what you measure is closely related to the perceived incentive structure within the organization, and the lack of systematic measurement of the problem of complaints may convey to police officers and police administrators alike a lack of concern, and I think that that lack of concern could be remedied by national commitment to using this as a social indicator that is focused on a jurisdiction-by-jurisdiction basis.

COMMISSIONER RUIZ. Thank you very much.

Lawrence Sherman has previously been introduced to the audience. Dr. Sherman appeared previously on the panel entitled "regulating police practices." He likewise currently is engaged in research concerning homicides by police officers. Dr. Sherman.

STATEMENT OF LAWRENCE SHERMAN, PROFESSOR, GRADUATE SCHOOL OF CRIMINAL JUSTICE, STATE UNIVERSITY OF NEW YORK AT ALBANY

DR. SHERMAN. Thank you, Commissioner.

I would like to address three questions rather briefly this morning. One is what kinds of research on the police Federal funds should be directed towards in the coming years. Secondly, I would like to pick up on some comments by Chairman Flemming regarding what kinds of community groups could be supported by Federal funds, and third, I would like to speak a little bit about what the Commission itself might do in terms of research as it pursues this terribly important project.

First, in terms of the federally-funded research efforts in the police area, I would like to make some suggestions regarding not only the expenditure of LEAA funds but also funds spent by the National Science Foundation and by the National Institute of Mental Health. There has been an explosion of research over the past 10 years in the police area, and it's become fashionable for some people to say, "We have spent all that money and we've learned very little." But I think that kind of comment fails to recognize the terribly important need for accumulation of research findings and how in areas like medical research, even though we have had 100 years now of good research, there's still an awful lot of questions we have yet to answer. Police research is in its infancy and although we do have one study available, or two maybe, on a lot of topics, we need many more studies, and perhaps we need to be directing the studies to rather different *kinds* of questions.

I think the basic problem with doing police work in a way that protects civil rights is that it's so difficult to do. The complexity of the police role, regardless of what you think it should be, just in terms of what the police now face on the streets of the cities, is rarely appreciated. I think many people, even those in government and in universities, tend to think that police work is very simple. You just put on the badge and the gun, and you basically go out and push people around, tell them what to do if they're not doing things right.

But I would compare the difficulty of handling a family fight to brain surgery. Brain surgeons get some training in hand and eye coordination, but they also use procedures that are founded on years of scientific research about what steps should be taken in order to correct certain problems. The police are facing a situation no less difficult than fixing brain problems, but they don't have research to rely on. They are being blamed for going out and doing something as difficult as that without any of the support of research and scientifically based procedures that one needs to do that kind of thing successfully. Even just compared to setting bones, when a doctor knows that a bone is broken, there is a procedure he can follow to place the bone into the right position and heal it. It's fairly simple and straightforward and it's established in research. Much of what the police do has no such information base or knowledge base on which to draw.

So I'd like to suggest that more Federal funds be directed into the area of evaluation of alternative methods for doing specific kinds of police work. Now, some might say that we've spent a lot of money on the study of police intervention in family fights, which, incidentally, is a very violent area and one that accounts for a good deal of injury to both citizens and police; and it's true that we have looked at certain kinds of training programs and their effects on violence rates in family-fight situations. But what we haven't done is to fund experimental research comparing the effects of different ways. In other words, the training has preceded the research on which it should be based. And in our haste to jump to quick solutions, we have failed to do what Professor Smith has suggested, which is to study some alternative solutions before recommending any particular solution.

So I think that the Federal research on the police should be directed in that area, and it will require a great deal of cooperation by the police themselves, but that has been very encouraging because you're seeing a trend now in certain police departments, such as the San Diego and Kansas City Police Departments, in which research has become such a part of the fabric of the department that they're almost like teaching hospitals. They expect research to be going on on a day-to-day basis. It's not viewed as an interference. So I think there is a great potential for doing more research of that nature with the active cooperation of police departments.

Secondly, I'd like to suggest that Federal funds be directed to the support of community groups that are attempting to deal with the problem of police misconduct. And the most logical source of those funds, it seems to me, is the Law Enforcement Assistance Administration. I think we tend to forget that the stated objectives of the Law Enforcement Assistance Administration in the Omnibus Crime Control Act of 1968 were not just crime control. The objectives, to quote the act, are to "increase the fairness and effectiveness of law enforcement and criminal justice in the United States."

If you look at the funding history of the Law Enforcement Assistance Administration, you'll find that the vast majority of the funds have been directed towards increasing the *effectiveness* of crime control, and I certainly don't want to minimize that as a goal, but I think you will find that very little of the LEAA monies have been directed to increasing the *fairness* of law enforcement in this country. Part of the problem is that the Congress decided that 85 percent of the money should be given to the States to spend in any way that they saw fit, and that problem has been discussed in depth elsewhere, but I would suggest that it contributes to the relative absence of funds supporting the increasing fairness of law enforcement.

If LEAA central in its limited discretionary funds, however, could adopt an approach similar to the one they are using now to fund community crime-prevention crews to also fund community groups for dealing with police misconduct, I think the Federal funds might be

able to help generate or at least to help organize and articulate the kind of pressure that I suggested yesterday is necessary in order to get the police departments to institute greater internal control, greater self-control.

An example of how this might work is the Chicago Law Enforcement Study Group. Chicago is perhaps atypical relative to other cities because it's always been a city where community organizations are well organized and active. Chicago established a crime commission with the support of the business community as early as 1919, and that's been an important group in terms of organized crime problems. Recently, however, they have established a coalition of some 25 community and police groups, and that coalition began, if I might say, in a rather confrontative style trying to monitor police practices and misconduct in Chicago and trying to build some countervailing pressure. I think that Amatai Schwartz's comments about the type of input that such groups should make are appropriate, because Schwartz suggested that confrontation and general complaints about brutality without being specific in the type of issues being examined will do very little good.

In recent years the study group in Chicago, this community coalition, has addressed the problem of deadly force in a very sophisticated way, not going in saying, "We know that you guys are shooting people left and right with no justification," but rather going in saying, "We're concerned about this problem. We'd like to work with you to study the instances in which force is used to learn something about them, to learn specific things that might help reduce the frequency of deadly force." One of the things they've discovered is that if an officer cocks his gun when he goes into a situation, that if he drops the gun or if it bounces against something, it's very likely to go off. And so there's a lot of accidental killings that result from just that procedure which is called single-action shooting, whereas if the officer does not cock the gun and he has to pull the trigger much harder, there's much less risk of an accidental death resulting.

Now, that kind of technical and very sophisticated research on the part of community coalitions can make a big difference, and I think in Chicago it already has, to have that kind of community monitoring of police department processes. And I would suggest that if LEAA could fund those kinds of groups in other communities that similar beneficial experiences would result.

There's another problem. It's a problem that's already risen in the community crime-prevention groups, and that is the administrative competence of the groups receiving the funds. Very often these are well-intentioned groups that just don't have accountants, they don't have the kind of people who can handle Federal grants, and in cities where you don't have a strong group of community organizations to draw on, like Chicago has, perhaps the best thing to do would be to fund it through an established organization like the ACLU. But I think

those are fairly technical problems that can be ironed out once there is a commitment on the part of the Law Enforcement Assistance Administration to get community groups involved in the monitoring and responsible attempts to solve problems of police misconduct.

Thirdly, let me just briefly suggest some things that the Commission might do in its further research. One is that I would suggest that you look at the entire process of Federal investigations of police misconduct and Federal funding of local police departments that may be systematically engaging in misconduct. One of the things I heard in our first session this morning consistently from both the investigator side, Mr. Days, and from the revenue sharing, the compliance offices is that they have limited resources. I think it's nice that LEAA has been able to increase the number of compliance studies they do from two a year to two a month, but there are still an awful lot more police departments out there than you're going to be able to monitor on a regular basis at the rate of two a month. I suspect if the Commission could examine the problem and document the need for more resources, that those resources might well be forthcoming.

A similar problem exists in terms of investigations, and the low prosecution rate to result from the very high number of complaints, I think, as Commissioner Saltzman's question demonstrated this morning, should not be taken as evidence that there's not a problem. I think it should be taken more that there's limited resources in the Civil Rights Division for investigating complaints, and they make some priority decisions, but some of the cases that get left out in that process of setting priorities could be very important. With more resources in the Civil Rights Division, perhaps more cases could be prosecuted and more deterrent effects could be achieved.

I am also glad to hear that Mr. Days is satisfied with the work of the FBI. I would suggest that the Commission ask some other people about that issue, particularly Assistant U.S. Attorneys who have complained to me about the FBI's unwillingness to get involved in these areas. Perhaps those complaints are out of date. Perhaps with the changing priority of the new administration that problem has indeed been solved, but I would suggest that it's well worth looking into on the part of Commission staff.

Finally, as you hold hearings around the country, I would suggest that you seek out not just police administrators but police officers who can tell you their view of some of the incidents that have been labeled as violations of police conduct. I think that you will find with the complexity of the police role from the police officer's standpoint, he's just doing his job. He's being responsible to his job in doing some things that in retrospect look like violations of civil liberties.

You might certainly also want to have victims of police misconduct presenting their side. To go right to the source I think might be very illuminating and might provide further evidence that in their efforts to control crime—a goal which I think the police probably have relatively

limited capability at succeeding in the achievement of—in their efforts to control crime, perhaps the police extract a greater price in civil liberties than we might want to pay as a society, and even with studies like the one I mentioned yesterday by James Q. Wilson showing aggressive and harassing patrol techniques reduce the robbery rate somewhat, we may want to expose that. I think the Commission is just the kind of agency to look at that kind of issue and say, "Okay, it may work, but is it worth the price?"

I want to thank you again, not only for having me, but for even holding these hearings and for drawing some attention to these terribly important issues.

COMMISSIONER RUIZ. We wish to thank you for attending the hearings.

The next panelist, Wayne A. Kerstetter, is currently an associate professor of criminal justice at the University of Illinois in Chicago Circle, and a Clarence Dade Fellow at the Center for Studies in Criminal Justice at the University of Chicago. Previously he served as associate director of that center. Prior to entering academia, he served as superintendent of the Illinois Bureau of Investigations and as assistant first deputy police commissioner of the city of New York. He received his B.A. and J.D. degrees from the University of Chicago and has published widely on a variety of criminal justice issues. Mr. Kerstetter.

STATEMENT OF WAYNE A. KERSTETTER, ASSOCIATE PROFESSOR OF CRIMINAL JUSTICE, UNIVERSITY OF ILLINOIS, CHICAGO CIRCLE

MR. KERSTETTER. Thank you, Commissioners.

Again, I also feel a great sense of privilege in the opportunity to meet here with you over these last 2 days to discuss this very important issue.

Before I begin my brief remarks about research needs, I would like to respond or comment a little further about the Chicago law enforcement group that Larry has just mentioned because it illustrates a problem and an alternative to a problem that troubles me somewhat. Very often as I listen and read about the activities of people who are involved with civil rights concerns, often what I hear is a constant attempt to go around the established political and governmental institutions, and that troubles me. That troubles me in that we have made a commitment in this country of 200 years to certain kinds of institutions, certain kinds of governmental structures, that I think, on balance, have served us not all that badly. What I'd like to suggest is that occasionally, at least, we focus our attention on creative ways to use those political and governmental structures. We all are aware of some of the difficulties in making those structures responsive to the needs of minority groups. But let me suggest to you that in times there are ways if you think about how they are structured and what the opportunities are there for.

For example, Larry mentioned and Mr. Carrington earlier quoted from a study of the Chicago Law Enforcement Study Group about the police use of deadly force. Well, the earlier study that was done in the late sixties to early seventies was very creative in the use of records that were available, not from the police departments but from the coroner's office and from the newspaper morgue, and was able on the basis of that kind of information to get a study that stood up actually quite well in the period of 7 or 8 years.

Currently a very substantial study, including some 600 incidents, is underway in Chicago of the police use of weapons that resulted in injury or death to citizens, and also the use of weapons by citizens that resulted in injury and death to police officers. They did this by approaching and, as I guess I don't need to say, generally recognizing the relatively monolithic political structure in Chicago—what the study group did was approach the Republican State's attorney and asked, knowing that he used the felony review process to look at all cases in which a citizen was wounded, asked to review those files, and received access to those files. Now, within the structure of the kind of competition that we foster in our two-party system, this then gave them an insight and in fact an entree into cooperation with the Chicago police department.

Similarly, in structuring this study, which is obviously a very sensitive area, in a rather shrewd move the director of that study is a former clerk to one of the leading Illinois Supreme Court justices. The advisory board includes a Federal appellate court judge who was a former State prosecutor, State judge, U.S. Attorney, and Federal district court judge, the local law dean who received and accomplished some national reputation, a former police administrator, and the head of the State bar association.

So, by using these various institutions that already exist in a creative way, the law enforcement group has been able to gain access, gain information, and gain credibility, if you will, in dealing with this problem, and I think too often we ignore it in trying to form other avenues and vehicles. So much for that.

As the last speaker I thought it might be useful to look back to what has been said over the last 2 days and make a few observations.

In terms of the research and data needs, the problem, of course, is where to begin and what to include. We have had many assertions here in the last 2 days about the nature and causes of police misconduct. For example, Dean Myren has suggested that the environment in which the police officer works greatly affects his role and the attitudes and behaviors that he adopts. Professor Sherman has suggested that at least a part of the public supports aggressive attitudes and behavior by police and even supports actions which may be inappropriate or even illegal. Dr. Reiser points to the various job stresses associated with the police role and suggests that these play a part in a policeman's conduct, and there were a number of others.

Now, I personally think that these are really quite profound insights. I may think that because I happen to agree with them, but, be that as it may, they are nevertheless at this point only thoughtful assertions, insightful hypotheses, if you will. While we have some evidence in support of them, we are far from achieving a level of understanding of these factors, their impact and interactions, that can provide practical tools with which to limit and control police misconduct. Clearly, here is an area where sustained—and again I would reemphasize the point that Larry has said about the infancy of police research. We need sustained efforts and valid research to develop these ideas and get a larger and deeper understanding. These were attempts, the three that I've just mentioned, to understand the underlying dynamics of police misconduct.

A number of the speakers at this consultation have discussed proposals for administrative action, which is aimed at short-term improvement in the reduction of police misconduct. Kenneth Culp Davis suggested the development of guidelines with appropriate community imput. Again, this is a suggestion that appears to me to offer substantial profit, and I believe that great benefit could be gained from a careful testing of the use of guidelines to structure police discretion.

Mr. Murphy yesterday and Professor Sherman suggested that the same managerial techniques that have achieved some success in the control of corruption could be usefully employed in dealing with other police misconduct. Again, another area where extensive application and testing is desirable.

These are wide-ranging administrative and research efforts that are perhaps beyond the scope of this Commission. There are, however, some research efforts that you could consider. A striking statement to me was made here yesterday, that during the last year there has been a substantial increase in police brutality. It is a surprising statement to me. It was not my sense that that was what was happening, and I suspect that most people who are looking at the field would also express some surprise. I think it's very important to determine whether in fact this is true. We have talked during this consultation about the ambiguity involved in the police use of force. This is an ambiguity both of fact and of principle. This ambiguity will perplex and confound our attempt to determine whether in fact this increase of incidents of police excessive use of force, particularly nonlethal force, has occurred, and thus we cannot address the issue directly.

We need to look for appropriate indicators, and let me try and suggest a few. One, the incidence of resisting-arrest charges. The literature and our experience indicates that sometimes these are used as covers for excessive use of force. This data should be collected and analyzed for a number of departments over a period of years to see whether in fact that indicator would show an increase. Let me emphasize two points about the resisting-arrest charges. One I want to emphasize most strongly is that many if not most of these are probably

entirely valid, and I am suggesting that the resisting-arrest charges only provide an indicator of the level of tension between police and the community, and there can be a lot of factors, but it would be a place to begin.

Another indicator is civilian complaints about police misconduct. There is very little knowledge available in a systematic and compatible form of the number of civilian complaints about police misconduct broken down by type of misconduct, background of complaints, and disposition of complaints. This information should be collected across time, perhaps for a period of 5 to 10 years, and across cities. Information could be compared, for example, information received by the Justice Department and other Federal agencies. These indicators would give us first some sense of whether indeed there has been an increase in police use of excessive force in the recent past. The comparison, using compatible data, while it must be used with care, may give us some insight also into the nature and scope of the problem that we face.

A third approach would be victimization surveys along the lines that the Federal Government has sponsored over the last few years on general crime problems, which goes directly to the community seeking reports of personal experience with police use of force. Great care must be taken on several issues in such a survey. First, care must be taken that the survey sample is properly drawn. It probably should focus on persons who by reason of class, age, and race may disproportionately bear the burden of the use of excessive force. On the other hand, both questions posed by the survey and interpretation of the results must be treated with great care. Again, the ambiguity of both situations and the principles would be a problem, as well as self-interest of the respondents. Both must be kept in mind.

These are quantifiable measures. Allow me to put on a lawyer's hat and suggest one other approach in closing. It has been observed here that the official written policy and the operating street policy of police departments are often different. It has also been suggested that while police officers may acknowledge what a police chief says, they respond to what he does. To gain some insight into what the operating policies of agencies are, it would be useful to study the actual cases in which a department took disciplinary action for police misconduct. Of course, these cases must be suitably matched to protect individual privacy, but a careful study of precisely when and under what factual situations a department disciplines its officers should provide some insight into its real operating policy. Of course, this approach would not capture incidents in which informal discipline was exercised and would not delineate definitively the policy of an agency, but it would give us a much better idea of actual standards than we currently have.

These suggestions just scratch the surface of the multitude of issues that have been raised over the last 2 days, but it is and would provide baseline data important both to understanding and policy in this area. Thank you.

COMMISSIONER RUIZ. Mr. Kerstetter, you gave us a good windup. You reacted to Dr. Sherman and many of the earlier panelists. You really started off this portion of the panel windup which will permit the panelists to take a second look and add to the discussion. Who will volunteer first? Mr. Smith?

DR. SMITH. Thank you.

Professor Sherman gave you one sort of suggestion as to whom you might speak when you do the case studies in the communities. It occurs to me in light of the observations that have been made by various panelists about the importance of the community attitude toward protection of civil rights that one of the readings that you take when you go to communities be taken from groups that are perceived to be very supportive of the police and, in discussions with them, try to ascertain the extent to which they're sensitized and concerned about the police protection of civil rights as part of the practices. In addition to the idea of talking to patrolmen, I think that some research on how police departments operate suggests that another group would be the sergeants. The key sort of actor in the internal supervision of police is the immediate supervisor of patrolmen, the sergeants. And their sensitivity and attitude toward this problem might be an important thing to gauge.

DR. SHERMAN. Commissioner, I would just also like to note that the report of the National Advisory Commission on Higher Education for Police Officers published last week contains recommendations for Federal policies that could affect the problem of police misconduct, assuming that education might have some impact on police performance. The report notes the absence of research, but speculates that the relatively small observed effects of education so far, to the extent that we can measure them, might be attributable to the fact that it has not been a college education that we have typically thought of as going to college. It's not been a residential education. It's not been full time. Rather, the lead program which has been very popular politically has given a little bit of money to a lot of people to take some extra clases that are very often taught by the same people who teach police academy programs. And it has not really infused policing with the perspectives on different value systems and different knowledge systems that higher education in its best form might do.

So the Advisory Commission on Police Education has recommended that law enforcement education programs be restructured by the Congress, that the legislation establishing that program be reexamined in a way that could provide support for full-time residential education. We need to do more than sending police officers to a few classes in the local community college. We should rather undertake a program whereby we're sending the police in their terribly important role to the best institutions of higher education we have in the country to get the best kind of educational experience. Instead of $700-a-year funding, it's about $5,000, or maybe even $10,000 for people who have fami-

lies, to get at least 1 year of residential education experience. I think it's only when that happens that we can even hope—and this is just speculation not based on research—I think not until that happens can we hope that education will have an impact. So I want to suggest that as a possible Federal legislative action in that area that you may want to consider commenting on.

COMMISSIONER RUIZ. The role of the panelists during the past 2 days has complied with our fondest expectations, and we have become educated on the subject, which is what we wanted to do.

I would like now to turn the chair back to our Chairman, Dr. Flemming.

CHAIRMAN FLEMMING. I would like to express appreciation to our staff for having organized the consultation in such a manner that this panel was the final panel because you have identified—those of you who have been here—the issues of concern that were identified for us earlier in the consultation. You have summed them up very effectively, and you have related very effectively on the whole area of research and demonstration and we appreciate that very much. This will be helpful to us as we evaluate the evidence from this consultation, evaluate the evidence that has come to us from our State Advisory Committees as they have worked in this area, and as we evaluate the evidence that will come to us in at least two public hearings that we will be conducting.

I think this is a very good note to end on, and we are very grateful to each one of you for the contribution, not only that you have made to us but the contributions that you are making as professionals in this field.

Thus, I will declare the consultation at an end. Those in the audience who stayed with us right to the end, thank you very, very much. We hope that you have found it as helpful as we as members of the Commission have found it to be. Thank you all very, very much.

☆ U. S. GOVERNMENT PRINTING OFFICE : 1979 629-266/2263